

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 1278 - L.D. 1723

**An Act Regarding Winter Maintenance on Private Roads in the Town of
Windham**

Emergency preamble. **Whereas**, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Town of Windham has provided winter maintenance service to approximately 101 private ways in the town for several years; and

Whereas, approximately 1,700 residents live on the private ways maintained in the winter by the Town of Windham and have come to rely on this service; and

Whereas, continuation of this service may expose the Town of Windham to legal liability; and

Whereas, cessation of this service may expose the Town of Windham to legal liability; and

Whereas, the Town of Windham has been unable, despite its best efforts, to find an appropriate resolution to this complicated and long-standing situation and is now asking the Legislature for assistance; and

Whereas, the Legislature recognizes the difficulties facing the Town of Windham and is willing to assist the town for a reasonable period of time; and

Whereas, part of the solution for the Town of Windham involves working with the residents living along the private ways prior to the beginning of the next winter maintenance season; and

Whereas, the span of time between 90 days after adjournment of this Legislature and the beginning of the next winter maintenance season is not sufficient time for the Town of Windham to make sufficient progress working with residents; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. Definitions. As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Council. "Council" means the town council of the Town of Windham.

2. Designated private way. "Designated private way" means a private way located in the Town of Windham that satisfies the criteria listed in section 3, subsection 1.

3. Private way. "Private way" has the same meaning as in the Maine Revised Statutes, Title 23, section 1903, subsection 10-A.

4. Road association. "Road association" means a road association created pursuant to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.

5. Road commissioner. "Road commissioner" means the road commissioner, as described by the Maine Revised Statutes, Title 23, section 2701, of the Town of Windham.

6. Town way. "Town way" has the same meaning as in the Maine Revised Statutes, Title 23, section 3021, subsection 3.

7. Winter maintenance. "Winter maintenance" means the snow removal and surface treatment, including sanding and salting, performed on designated private ways.

Sec. 2. Authorization of winter maintenance on designated private ways. The council and the Town of Windham may use public equipment to perform winter maintenance on a designated private way, regardless of the existence of a public easement over the designated private way for the purpose of ensuring the health and safety of the residents of the Town of Windham.

Sec. 3. Ordinance; roster; maintenance standards; termination. The council may enact an ordinance to provide for the winter maintenance of designated private ways according to this section.

1. Identification of designated private ways. The council may identify a private way in the Town of Windham as a designated private way if:

A. The council has evidence that the Town of Windham has performed winter maintenance on the private way for at least 20 years prior to the effective date of this Act; and

B. The road commissioner has determined that the private way cannot meet standards developed or required by generally applicable local ordinances for dedication and acceptance of the private way as a town way pursuant to the Maine Revised Statutes, Title 23, section 3025.

2. Creation and maintenance of designated private way roster and map. The Town of Windham may create and maintain a roster and map of all designated private ways. If a private way is included on the roster and map of designated private ways, no road association or owner of property benefited by the private way may bring a claim asserting that the private way has become a town way by any method or mechanism other than dedication and acceptance pursuant to the Maine Revised Statutes, Title 23, section 3025.

3. Development of basic maintenance standards. The road commissioner may, in consultation with the council, develop basic maintenance standards for designated private ways that the road commissioner may use to determine the necessary maintenance a road association or owners of property benefited by a private way must perform for the private way to be a designated private way.

4. Conditions of suspension and termination. The Town of Windham may suspend or cease to perform winter maintenance on a designated private way as follows.

A. The Town of Windham has no obligation to perform winter maintenance on a designated private way if:

(1) The council or road commissioner has notified the road association or owners of property benefited by the private way of maintenance necessary to satisfy the road commissioner's basic maintenance standards under subsection 3 and the maintenance is not performed to the road commissioner's satisfaction by September 1st following the date on which notice was given; or

(2) Owners of property benefited by the private way have not formed a road association within 2 years of the effective date of this Act or before a later date set by the council.

Within 60 days of the creation of the roster and map of designated private ways pursuant to subsection 2, the council may notify the road association or owners of property benefited by a designated private way of the conditions for continued winter maintenance contained in this paragraph.

B. A private way may be removed from the roster and map of designated private ways created pursuant to subsection 2 if:

(1) The council accepts the private way as a town way pursuant to the Maine Revised Statutes, Title 23, section 3025 and any applicable local ordinance; or

(2) The road association of the private way or a majority of the owners of property benefited by the private way present a petition to the council for the removal of the private way from the roster and map.

5. Ordinance. The council may by ordinance establish additional policies and procedures to effectuate the provisions of this Act.

Sec. 4. Town of Windham report. The Town of Windham may submit a report to the Joint Standing Committee on State and Local Government by February 1, 2022. The report, if submitted, must include the following information:

A. A detailed description of the progress made by the council and the town manager to conform the use of public funds to provide winter maintenance on private ways with applicable constitutional and statutory laws;

B. An assessment by the Town of Windham fire-rescue chief regarding the use of fire-rescue vehicles on private ways in the town for fire and safety protection;

C. An assessment by the Town of Windham police chief regarding the use of police vehicles on private ways in the town for public health and safety; and

D. An assessment of whether winter maintenance by the Town of Windham of its designated private ways has an environmental impact on the surrounding water bodies.

The joint standing committee may report out a bill based on the report to the Second Regular Session of the 130th Legislature.

Sec. 5. Repeal. This Act is repealed June 30, 2022.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.