

TESTIMONY IN OPPOSITION TO LD 928 “AN ACT TO MAINTAIN PUBLIC ACCESS TO TOWN WAYS IN MAINE”

Dear Chairs Baldacci & Salisbury and Distinguished
Members of the Committee:

My name is Ryan Pelletier, I am a resident of St. Agatha and live on Pelletier Island, a 400-acre inland Island on Long Lake in northern Aroostook County. The Island is connected to the mainland by a ½ mile causeway built in the late 1950s and the Island Road is a 2.5 mile long Public Easement Road that circles the island and provides access for the 60 year round and 120 seasonal residents who call the Island their home.

Island property owners pay local property taxes to the municipality, however, our road is maintained by our dues which are formulated and collected by the Island Landowners Association, a legally formed Road Association governed by the laws of the State of Maine.

I am here today to testify in opposition to LD 928.

First and foremost, the very title of this bill is problematic. If a town abandons or discontinues a road it no longer is a Town Way. If the Town retains a public easement, the road classification is technically that, a Public Easement Road.

Furthermore, a town, through its legislative body can formally discontinue a town way. A town also has the ability to formally abandon a town way. I am not aware of any process in law where a town can discontinue a town way through abandonment, which this bill seems to attempt to address. Those two processes are distinct and not one in the same.

As to the “gates and bars” language often found in older references to private ways, the purpose of gates and bars was to allow abutting owners to “lessen the hazard of unwarranted or casual intrusion on their property due to it being opened to easy access from the main highway. In spite of the erection of gates and bars the public still would have the right to use the way in the same manner as the parties who are primarily interested in it.” (see Footnote 1) The Legislature removed this phrase from the public easement statute in 1976.

As for the concerns about establishing gates on a public easement, I would offer that if the general public through the local town does not provide any local funding for upkeep and maintenance of the public easement, there should not be an expectation that the public easement should have unfettered access by the general public. If the abutters of the road through their Association and elected Road Commissioner determine that to protect their investment through Association dues, fundraisers etc it is

in their best interest to bar or gate and limit access at certain times that should be their right.

I do not know the origins of this bill, however, I can speculate that a property owner somewhere established a gate and blocked access to other property owners. That is wrong and should be a matter of civil action, not legislation.

This bill opens the door to all traffic, including people accessing these roads that have no stake in their upkeep or maintenance.

In our case, our dues pay for road plowing, ditching, culvert replacement, rip rap and the list goes on and on. Local property taxes do not support this work and at certain times of the year, limiting access is the only thing that saves the roadway from further disrepair.

Thank you for your time and consideration and I strongly encourage you to oppose LD 928.

I am happy to answer any questions you may have.

Footnote 1: Browne v. Connor, 138 Me. 63, 67-68, 21 A.2d 709 (1941); Franklin Property Trust v. Foresite, Inc., 438 A.2d 218; 48 Me. L. Rev. 197.