

Senator Nangle, Representative Stover, Members of the State and Local Government Committee,

My name is Roberta Manter, and I live in Fayette. Regarding LD 461, I find myself wearing several hats. As a Board Member of MARA, I strongly believe in this bill's objectives. MARA and the Abandoned and Discontinued Roads Commission (ADRC) agree that sorting out the confusing terminology will require more time. As founder of Maine ROADWays, and living on a road that has been declared a "private way" and a "public easement," the one issue of the terminology and its meaning is of utmost importance to me. My husband will speak on that in more detail.

MARA agrees with the ADRC's recommendation to delete the three paragraphs (6, 13, and 14,) regarding town standards for private roads.

With regard to Section 12, I'm glad Pete Coughlan of the DOT has offered to provide a more readily available list of town maintained roads and E-911 information. But more work will be needed to distinguish E-911 addresses on private roads from those on abandoned and discontinued roads.

The ADRC focused on parts of LD 461 and MARA's proposed amendment that relate to abandoned and discontinued roads. If you follow their recommendation to hold parts of the bill over, I hope you can allow the paragraphs regarding 23 MRS §§3101-3105-A to move forward this session. Having been a Board Member of a Road Association, I can tell you how urgent these reforms are.

The intent of §3101's prohibition against paving was to prevent well-to-do members who want paving from imposing high dues payments on other members for whom that would be a hardship. But it ties the hands of those who need to repair roads that were paved after 2007 but before a road association was formed. My daughter's family bought their land in 2006 because the road was *not* paved and therefore would not be expensive to maintain. Later the owner of a subdivision on part of the road paved his portion before forming a road association. It already needs repair, but §3101 prohibits it.

MARA's amendment offers options - specifically allowing "reclaim," and, in §3103, allowing reserve accounts to build funds for long range projects.

What follows is my own personal opinion regarding 23 MRS §3104, not the position of MARA. I was present when the bill was passed that created the 18 month expiration of Notice of Claim, and I opposed it then. It was supposed to make the process easier for volunteer laymen running road associations. It has had the opposite effect. Getting people to agree to serve on a road association board is difficult; getting them to tackle filing Notices of Claim is even more difficult.

I think it was assumed that most people will pay their overdue dues when a Notice of Claim is filed. If that were the case, an 18 month expiration would be reasonable. What actually happens is that some will pay when they get the advance warning letter. A few more will pay or set up a

payment plan when the Claim is actually filed. But then there are those who have no intention of paying unless or until they are forced to pay because they want to sell the property. These claims can linger for years, and the longer they go, the more money is at stake for the road association.

But miss the deadline by just one day and the claim expires. There is some disagreement as to whether a new claim can be filed by starting the process over again, or whether that claim is forever lost. MARA originally proposed repealing the 18 month expiration entirely. After being told that Title Insurers would object to that proposal, MARA conceded to a six year expiration. *I favor repeal.*

My concern is that the officers of a road association may change more than once in six years. Who is going to keep track of the date on which they must renew a claim filed a few officers ago? I've seen what happens when a town closes a road to winter maintenance for a ten year period. After ten years, when the road should be reviewed to see whether to resume snow removal or renew the closing, there may be new town officials who don't know the history. No one remembers the road had been maintained by the town, and by the time someone questions it, the town claims the road abandoned. I have no reason to believe the volunteers who run a road association will be any better at keeping track of what a previous Board has done.

Since 2017, an amendment to 33 MRS 173 has required real estate disclosure when the access to a property being sold is not maintained by the public. That law has been a great improvement in that realtors now routinely contact the road association before the sale to ask if there are any outstanding dues, or to clear up any Notice of Claim. Locating the officers of the road association should not be a problem, since everyone who lives on the road must know where to send their annual dues payment.

On the other hand, I can see the point of the Title Insurers that if a road association no longer exists, finding who to contact can be impossible. With no expiration date, the Notice of Claim cannot be cleared. Would it be possible to set up a process whereby a Notice of Claim would be extinguished if the road association is dissolved or fails due to lack of participation? If residents on the road report that there is no longer a road association, then there is no one to whom the overdue dues need be paid.

Finally, I cannot stress enough the issue of the unconstitutionality of "private ways" and "public easements" - public roads that are not maintained by the public. How can you reconcile Jordan v Canton (public roads with no public maintenance are unconstitutional in the absence of just compensation,) with Fayette v Manter (a public easement gives the public an "unfettered right of access" but the public has no maintenance responsibility)? How do you reconcile Brown v Warchalowski (Unconstitutional to establish a private way without public exigency) and Lamb v New Sharon (Public loses its rights to a road after 30 years) with 23 MRS 3026 and 3028 (Roads discontinued or abandoned become public easements)?

I would love to have the chance to elaborate on this point for the Committee.
Thank you.