



COMMUNITY ♦ ADVOCACY ♦ KNOWLEDGE ♦ LEGACY

Board of Directors

Tom Allen
President

Seth Sprague
1st Vice-President

Jennifer Dann
2nd Vice-President

Mark Doty
Treasurer

Jeff Williams
Secretary

Doug Baston

Kyle Burdick

Hannah Carter

Jim Clair

Chris Jackson

John Melrose

Richard Nass

Paul Sampson

Chapter Leaders

Si Balch

Larry Beauregard

Ernest Carle

Jim Ferrante

Randy Lagasse

Lauren Ouellette

Merle Ring

Andy Shultz

Andrew Smart

Jeff Williams

Testimony of Tom Doak

Executive Director

Maine Woodland Owners

In Opposition to LD 2264

“An Act to Further Clarify the Meaning of ‘Private Road’
and ‘Public Easement’ in Certain Provisions of Maine Law”

Senator Nangle, Representative Stover and distinguished members of the Joint Standing Committee on State and Local Government, my name is Tom Doak, I am the Executive Director of Maine Woodland Owners speaking today in opposition to LD 2264, “An Act to Further Clarify the Meaning of ‘Private Road’ and ‘Public Easement’ in Certain Provisions of Maine Law.”

There is a long history of problems created by abandoned and discontinued roads. Well intended but flawed statutes and changes to statutes enacted over the years have resulted in a whole host of issues this Committee has worked diligently to correct in the past several sessions. The first principle when talking about making more statutory changes to address abandoned and discontinued roads should be “first do no harm.” The changes in the bill before you today are potentially harmful and are confusing at the very least. We do not believe the bill makes constructive changes that will help ease the confusion over abandoned and discontinued roads.

My organization has been the primary entity that has brought bills to the legislature to unravel problems with abandoned and discontinued roads. This Committee created the Abandoned and Discontinued Roads Commission to develop workable comprehensive solutions, and my organization serves on that Commission. We are one of two organizations on the Commission that represent people who actually own the land where these easements are located. It is telling that these two groups, with the most at stake, opposed the recommendations in this legislation when the Commission voted on them.

We have several issues with this legislation. Our biggest objection is that it would compel landowners along an abandoned or discontinued road that has a public easement to create a road association to maintain the road when 3 or more landowner request it. It is similar to existing road association law, with a huge exception. Instead of a road association on a private road where the landowners

control the use of and access to the road, the landowners on a public easement do not control the use of or access to the public easement, the municipality does.

It essentially means the landowners would be maintaining the road not just for those who need the road for access, but for the public for any purpose. And this would not just be for motor vehicles. Despite an existing statute that requires landowner permission in order to operate an ATV (12 M.R.S. § 13157-A), municipalities (who are not the landowner) are granting permission for the creation of ATV trails, snowmobile trails etc. on public easements over the objection of the landowners with no requirement for those using the trail to maintain the trail.

Public easements were created to prevent land locking landowners. In many cases they have turned into the Wild West. If you are going to use the road association statute to compel those landowners on a public easement into contributing to a road association, then you should compel the municipality (the public) to be a contributing member of the road association as well.

The unfairness to private landowners does not stop there. Under Maine law, if an environmental violation occurs on a landowner property, regardless of the cause, the landowner is held responsible for fixing it. So, if a violation occurs on a public easement on an abandoned or discontinued road, even if the cause is public use, the landowner is responsible. Yet, that same landowner cannot control the public use. This is a similar issue regarding personal liability. Note that Section 2 paragraphs 8 and 9 explicitly make clear that the landowners have the liability even though they don't control the use.

There are other issues with this legislation. Under the definitions section in Section 2, Paragraph 1, subsection A-1, the "Repairs and maintenance" definition applies to public easements not repaired or maintained year round by a municipality. However, in the proposed changes to the remainder of Sections 2 through 5 the provisions regarding road associations on public easements apply only to public easements not repaired or maintained by a municipality. We are not sure what the purpose of this distinction is. It would appear that any maintenance by the municipality—even just providing a load of gravel—would be enough to disallow a road association or invalidate it.

We believe Sections 6, 7 and 8 of the bill are inconsistent with each other in that section 6 would give municipalities the full authority to plow, maintain and repair public easements to the extent directed by the legislative body, and sections 7 and 8 then limit that authority of municipalities to repair a public easement to protect great ponds or other natural resources to situations when only certain conditions are met.

In section 10 of the bill, requiring the use of helmets, the phrase "public roadway" is replaced with "public way." Public way is defined elsewhere in statute (29-A M.R.S. § 101(59)) as "a way, owned and maintained by the State, a county or a municipality, over which the general public has a right to pass." Does this change mean that a person under 16 years of age can ride a bicycle or roller skis on a public easement without a helmet because the public easement is not maintained by the municipality?

The questions about the changes in this bill are numerous, and in our view, the changes do more harm than good. Rather than passing a bill that has unknown consequences and could lead to greater confusion, we would encourage the Committee to send a letter to the Abandoned and Discontinued Roads Commission to encourage it to focus on the areas of greatest need when it comes to abandoned and discontinued roads. A few priorities include:

1. The unrestricted use of public easements needs addressing. The original purpose of a public easement was to avoid land locking landowners. It was never envisioned that public easements would become the recreational corridors they are today. Unrestricted use has placed a huge burden on landowners who need these roads for access. The Commission should review the acceptable uses of public easements and make recommendations for lessening the burden on landowners.
2. The issue of liability for landowners who live on discontinued or abandoned roads is of great concern. When a public road is abandoned or discontinued all responsibility for the road falls to the landowner to the center of the way. The land owner may now be personally liable for environmental hazards or physical damage done to the road by the public. The land owner may also be liable if someone is injured on the road. The Commission should make a recommendation for limiting liability for these landowners responsible for the upkeep of public easements.
3. The status of many roads is unclear or unknown to municipalities. Conducting a road inventory would be helpful to understand where things stand today with the status of many municipal roads thought to be discontinued or abandoned. Asking landowners to fund lawsuits to determine the status of roads is not a reasonable approach or a solution to this problem. A municipality should bear the initial burden of determining the legal status of the roads that were formerly public within its jurisdiction. Several years ago, the legislature asked municipalities to provide this information voluntarily and not one responded. The Commission should make a recommendation on obtaining this information from the municipalities.

We urge you to reject this legislation, and send it back to the Commission for more work.