

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

My name is Roberta Manter, I live in Fayette, and I am speaking neither for or against LD 2264. I wear several hats - Maine Alliance for Road Associations (MARA,) Residents & Owners on Abandoned & Discontinued Ways, (Maine ROADWays,) the Abandoned & Discontinued Roads Commission, (ADRC,) 42 year resident on a discontinued road, and wife of a 52 year resident on a discontinued road. These thoughts are my own, gleaned from those combined perspectives.

First, I must ask for a change to this bill's amendment to 23 MRS sections 3101-3106, which will apply to road associations on **private roads that have been designated as public easements to allow public snow removal**. I pointed out at an ADRC meeting that the added phrase, "public easement not repaired or maintained by a municipality" **MUST say, "public easement not repaired or maintained YEAR ROUND by a municipality."** It got changed on page 1 line 17, but not in the eight other places where that phrase appears. (See page 1 line 28; page 2 lines 6, 19, and 36; page 3 lines 15, 22, and 36; and page 4 line 4.) Failure to make those changes would have dire effects for towns which currently are able to provide limited services such as snow removal on private roads which are summer maintained by road associations, provided they have been designated as public easements. If this bill goes forward without having the words "year round" added in all of those places, it will mean that a road association cannot be formed on a private road which receives only winter plowing by the municipality. Towns are not going to want to have to also provide year round maintenance on these roads, and will vigorously oppose this bill, or will cease providing winter maintenance. **I can only support this bill if the language is changed throughout.**

I appreciate that there are some cases where a public easement provides the **only hope of access over a discontinued road**. It's not an ideal solution but in some cases it's currently the best our law allows. **We need to do better.**

On the other hand, I also see the unfairness, indeed, the **unconstitutionality, of using a road association to force private individuals to provide maintenance at their own private expense for roads which remain open to "unfettered" public use. Sections 3101-3104 should not be applied to discontinued roads that remain public easements.** While it is true that dividing the cost of that maintenance between the abutting landowners helps ease the burden which might otherwise be borne by just one of the abutters, it is wrong to *force anyone* to contribute over and above their taxes to the cost of maintaining a public road. A statutory road association compels landowners to pay, under threat of having a "notice of claim" - essentially a lien - filed against their property.

Compelled private maintenance of a public road is a taking of private property for public use without just compensation, in violation of the 5th Amendment to the US Constitution, and Maine Constitution Article 1, Section 21. Moreover, **requiring a person to provide his own labor to repair a road for the public's use is involuntary servitude**, in violation of the 13th Amendment to the US Constitution. My husband has served against his will for 52 years. He needs to be released from this obligation, as do others across this state who are compelled to maintain the public easements on which they live.

One of the major problems with the terminology is the fact that the term “public easement” is now applied to very different conditions. Originally, **private ways were laid out at the request** of an owner of improved land not yet connected to the public road system. They were invariably dead ends, and primarily benefitted the person at whose request they were laid out. When applied to **private roads so as to allow public plowing**, a public easement authorizes public use of roads which are in most cases dead ends and therefore will likely not attract much traffic. The abutters may choose this option. But the same designation is applied to **discontinued roads**, many of which are through roads and therefore attract use by those who care little if their use damages the road. The abutters are given no choice in this designation.

We need to look at origins. **The term “public easement” is currently applied to roads that were formed in at least four different ways.** To avoid causing more confusion by changing terms again, we may need a dictionary style definition, roughly along these lines: Public easement: 1. A private way laid out at the request of an owner of improved land not yet connected to the public road system. 2. A town way discontinued before 1965 or a county way discontinued before 1976 over which an easement was retained to preserve property access. 3. A town way discontinued after 1965. 4. A private road that has been accepted as a public easement for purposes of snow removal or limited public maintenance.

More work will be required in order to find ways to further clarify the terminology without having unintended consequences. It has become apparent that the extra assignment of sorting out the terminology has taken so much time that the Abandoned and Discontinued Roads Commission has not had adequate time to deal with the issues for which the Commission was formed, namely, the problems with abandoned and discontinued roads. **I therefor ask that whether or not this bill goes forward, the ADRC be allowed additional meetings so that the Commission can devote the necessary time to its assigned duties.**

Thank you,
Roberta Manter, Maine ROADWays