

Senator Baldacci, Representative Matlack, Members of the State and Local Government Committee:

My name is Roberta Manter, and I'm the founder of Maine ROADWays - Residents & Owners on Abandoned & Discontinued Ways. This bill offers some relief both for towns with stretched budgets, and for residents on "public easements." These are NOT private roads. While the public provides no maintenance, a public easement is open to unrestricted public motor vehicular travel. We recognize that with increased traffic and load weights, Towns struggle to keep their roads in repair. Giving up little used roads is a way to cut costs. But towns have an obligation under 23 MRSA 3651 to keep roads "safe and convenient."

In Maine, it's all or nothing - either keep a road to full town road standard, or cease maintenance entirely. Some states have "minimum maintenance" roads that are kept to lesser standards for restricted uses. But these states all prohibit reducing a road to that status if anyone lives on it. In Maine, towns can cease ALL maintenance on a road that's deemed to have too few residents. All we're asking is that these roads be kept merely "passable." This would allow towns to cut costs, while still assuring residents the ability to get to and from their homes.

I cannot fathom why public easements haven't been declared unconstitutional. In 1968, the "Limited User Highway" law was passed. It allowed selectmen to declare a road "of limited use and value to the traveling public," and simply cease maintenance. Yet the road remained open to public use. Just two years later the Maine Supreme Court determined in *Jordan v Canton* that a public road with no public maintenance will inevitably be destroyed. Access is a right attached to property, and damage to that access constitutes a "taking," requiring both due process and just compensation. The limited user highway provided neither, so it was declared unconstitutional. But the 1965 revision of the discontinuance law resulted in the automatic retention of a public easement, which is also a public road with no public maintenance. While the law requires determination of damages at the time of discontinuance, there is neither due process nor just compensation for the repeated destruction of access over time due to public use. How is that constitutional?

Is this bill an unfunded mandate on the Town? No. Requiring the RESIDENT to build a road for the public's use without pay is an unfunded mandate. The town receives funding by taxing residents on these roads, but it's all spent elsewhere in town, on things that resident doesn't get to enjoy if he cannot get there. At least some of that funding should be re-allocated to where it belongs - in the road from which it came. Besides, it's not a mandate because the town has other options. It can use 23 MRSA 3026-A to negotiate with landowners to create a private easement in common. Or, it can tax residents only for the land. (Ms Graham's suggestion of having a different tax rate for residents on public easements was not entirely off the mark. Unfortunately, many towns tax them the same, or even claim they should be taxed at a higher rate because they have privacy.) If the public needs the road, then keep it passable. If it can't do that, let the landowner keep his tax dollar so he can afford to repair the road. But don't tax him and destroy his public access.

Maine ROADWays' motto is, "Build a better public easement and the world will *BEAT* the

pathway to your door!” So as the landowner begins to get the access to property in better condition, the public takes advantage of the opportunity to use the road. In some cases, as in ours, this has led to the Town selling building permits, bringing in more residents. Along with the residents come oil deliveries, UPS and FedEx deliveries, trash collection, visiting guests, etc., all of whom use the road as members of the public. The Town enjoys increased tax revenue generated by the road, but is not obligated to return any of that revenue to keep the road even passable. Frankly, keeping up with the requests I get for help with these roads is becoming increasingly burdensome. New requests are coming in faster and faster, while most of the old ones continue to have problems. It’s high time the Legislature told towns to take some measure of responsibility for these roads. Please vote LD 1513 “Ought to Pass.”

I hope you will call on me to answer any questions during the work session. Meanwhile, for your convenience, below are links to relevant statutes with my comments as to how they apply.

#### **RELEVANT STATUTES:**

**23 MRSA 3021** - <http://legislature.maine.gov/legis/statutes/23/title23sec3021.html>

Defines a public easement as providing public access to land or water.

**23 MRSA 3022** - <http://legislature.maine.gov/legis/statutes/23/title23sec3022.html>

Limits a public easement to access by foot or motor vehicle. (Fayette v Manter defined it as an “unfettered right of access,” which has resulted in use by everything from ATV’s to log skidders.)

**23 MRSA 3026-A** - <http://legislature.maine.gov/legis/statutes/23/title23sec3026-A.html>

Discontinuance: The most recent amendment to this bill provides that when a town discontinues a road, it must give abutting landowners the option of agreeing to grant each other private easements in common so the public easement can be discontinued. This option was not available to roads discontinued before 2017. This DOES provide a possible solution for roads already discontinued, as it may be used to discontinue the public easement. This is one reason we argue that LD 1513 is NOT a mandate, as towns can use this option. Furthermore, LD 1513 would provide incentive for towns to use this option and relinquish the public easement. Currently, it’s difficult to get a town to agree to allow landowners this option because as long as the public easement remains, the rest of the town gets to use the road and it costs them nothing. The few voters on the road have little chance of out-voting the rest of the town.

**23 MRSA 3028** - <http://legislature.maine.gov/legis/statutes/23/title23sec3028.html>

Abandonment: Roads abandoned under this statute also become public easements due to the reference to section 3026 (now repealed and replaced with 3026-A), but there is no requirement in section 3028 to offer the option of extinguishing the public easement as there is in section 3026-A.

**23 MRSA 2019-A** - <http://legislature.maine.gov/legis/statutes/23/title23sec3029-A.html>

Cause of Action: This supposed “solution” to the problem of public damage to public easements has not been working well. While it does offer the award of reasonable attorney fees and costs, getting to that point is a long and tedious process. First, the landowner has to figure out who did the damage, which isn’t easy when someone drives through at the height of mud season when no one is around. Then the landowner must be able to document the damage, and prove that the damage was caused by the person being accused. And this does not address the slow insidious deterioration of the road that results from repeated use by various members of the public over time.

**17 MRSA 3853-D** - <http://legislature.maine.gov/legis/statutes/17/title17sec3853-D.html>

Damage to a public easement: In addition to the same challenges as with 23 MRSA 3029-A, this statute has a big problem in that law enforcement officers are reluctant to enforce it. I recommend that people have the statute in hand to show to the responding officer, but they still are often told, “It’s a civil matter. You’ll have to take it to Court.” I have yet to have anyone report back to me that they were successful in getting any law enforcement agent to enforce it. One person sent me a copy of the quarter inch thick packet of evidence she had submitted to logging industry authorities documenting damage by a logging operation. She recently sent me an email in which she described the logger’s totally inadequate gesture towards restoring the road to its former condition.

**33 MRSA 173, paragraph 6** - <http://legislature.maine.gov/legis/statutes/33/title33sec173.html>

Real estate disclosure: Prior to 2017, there was no requirement that a seller inform a buyer that the access to a home was not kept in repair at public expense. I receive complaints from people who bought their property 20 or 30 years ago who are now having problems with public use. When the Maine Realtors proposed this disclosure, Maine ROADWays worked with them to assure the wording would apply not only to private roads, but also to any road that is not maintained by the public. We then went on to propose a similar provision for undeveloped land, which often is purchased with an intent to build and move in. The result is **33 MRSA 193**.

<http://legislature.maine.gov/legis/statutes/33/title33sec193.html>

We hope these last two bills will ease the problem in the future - they are already working - but they do not help those who bought their property before 2017, who are dreading a future of involuntary servitude building a road for the public to use.

If you have read this far and would like a little comic relief, you can reward yourself by going here: <https://www.facebook.com/588714017873781/videos/804108393414824>