

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
FIRST SPECIAL SESSION (Filing No. H-1028)
107TH LEGISLATURE

COMMITTEE AMENDMENT " A" to H.P. 1920, L.D. 2108, Bill,
"AN ACT Relating to Town Ways."

Amend said Bill by inserting after section 6 the following:

'Sec. 6-A. 23 MRSA §2901, 1st sentence is amended to read:
No ~~private-way~~ town way, city street, public easement or highway
taking land of any railroad corporation shall be located, unless
a notice of the time and place of the hearing upon ~~said~~/^{the} location
has been served upon the president, any vice-president, any
director, the treasurer or any assistant treasurer, the general
manager or the clerk of ~~said~~ the corporation at least 7 days
before the time for ~~such~~ the hearing.

Further amend said Bill in section 8 in that part designated
"§3021." by striking out all of subsections 1 to 4 and inserting
in place thereof the following:

'1. Highway purposes. "Highway purposes" means use as a
town way or public easement and those things incidental to the
laying out, construction, improvement, maintenance, change of
location, alignment and drainage of town ways, including the
securing of materials therefor; provision for the health, welfare
and safety of the public using town ways; provision for parking
places, rest areas and preservation of scenic beauty along town
ways.

2. Public easement. "Public easement" means an easement
held by a municipality for purposes of public access to land
or water not otherwise connected to a public way, and includes

all rights enjoyed by the public with respect to private ways created by statute prior to the effective date of this Act. Private ways created pursuant to sections 3001 and 3004 prior to the effective date of this Act are public easements.

3. Town way. "Town way" means an area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle and all town or county ways not discontinued or abandoned before the effective date of this Act.'

Further amend said Bill in section 8 in that part designated "§3022." by striking out all of the 2nd paragraph and inserting in place thereof the following:

'The municipal officers may, upon the petition of any person, lay out, alter or widen a town way.'

Further amend said Bill in section 8 in that part designated "§3023." by striking out all of the 4th paragraph and inserting in place thereof the following:

'Unless specifically provided in the order of condemnation and unless easements are held by a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976 shall be in fee simple absolute.'

Further amend said Bill in section 8 by striking out all of that part designated "§3026." and inserting in place thereof the following:

'§3026. Discontinuance of town ways

A municipality may terminate in whole or in part any interest held by it for highway purposes. A municipality may discontinue

a town way or public easement after the municipal officers have given best practicable notice to all abutting property owners and the municipal planning board or office and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.

Upon approval of the discontinuance order by the legislative body, and unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained and all remaining interests of the municipality shall pass to the abutting property owners to the center of the way.'

Further amend said Bill in section 8 in that part designated "§3027." in the 3rd line (same in L.D.) by inserting after the underlined word "officers" the underlined punctuation and words ', with the approval of the municipal planning board or office.'

Further amend said Bill in section 8 by striking out all of that part designated "§3028." and inserting in place thereof the following:

'§3028. Abandonment of public ways

It shall be prima facie evidence that a town or county way established prior to January 1, 1946, and not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years next prior to January 1, 1976, has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. No municipality

or its officials shall be liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section shall be relegated to the same status as it would have had after a discontinuance pursuant to section 3026.'

Statement of Fact

The purpose of this amendment is to clarify the language of the bill, to remove the provisions relating to recreational access ways, clarify how the eminent domain power operates against railroads and public utilities and clarifies the language and extends the time period to 30 years for the presumption of abandonment.

Reported by the Committee on Local and County Government.

Reproduced and distributed under the direction of the Clerk of the House.

3/23/76

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