

MAINE STATE LEGISLATURE

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5/15/14

Majority

L.D. 1177

Date: 3/19/14

(Filing No. S-435)

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

126TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 414, L.D. 1177, Bill, "An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group"

Amend the bill by striking out everything after the title and before the summary and inserting the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §2060, sub-§2, as enacted by PL 1999, c. 188, §2, is amended to read:

2. Effect and exceptions. Upon discontinuance, all interests of the county or municipality pass to the abutting property owners to the center of the way, including any public easement, in accordance with section 3026 3026-A. When the Department of Transportation is an abutting owner, then the interests in the way pass to the property owner opposite the department's ownership in accordance with a plan showing the right-of-way line established for the new highway location by the department. The plan must be referenced in the order of discontinuance.

Sec. 2. 23 MRSA §3021, sub-§1-A is enacted to read:

1-A. Municipal legislative body. "Municipal legislative body" has the same meaning as in Title 30-A, section 2001, subsection 9.

Sec. 3. 23 MRSA §3021, sub-§2, as enacted by PL 1975, c. 711, §8, is amended to read:

COMMITTEE AMENDMENT

1 **2. Public easement.** "Public easement" means an easement held by a municipality
2 for purposes of public access to land or water not otherwise connected to a public way,
3 and includes all rights enjoyed by the public with respect to private ways created by
4 statute prior to ~~the effective date of this Act~~ July 29, 1976. Private ways created pursuant
5 to ~~former sections 3001 and 3004~~ prior to ~~the effective date of this Act~~ July 29, 1976 are
6 public easements.

7 **Sec. 4. 23 MRSA §3026**, as repealed and replaced by PL 1981, c. 683, §1, is
8 repealed.

9 **Sec. 5. 23 MRSA §§3026-A and 3026-B** are enacted to read:

10 **§3026-A. Discontinuance of town ways**

11 A municipality may terminate in whole or in part any interests held by it for highway
12 purposes. A municipality discontinuing a town way or public easement in this State must
13 meet the following requirements.

14 **1. Notification of discontinuance to abutting property owners and municipal**
15 **planning board.** The municipal officers shall give best practicable notice to all abutting
16 property owners and the municipal planning board or office of a proposed discontinuance
17 of a town way or public easement. As used in this subsection, "best practicable notice"
18 means, at minimum, the mailing by the United States Postal Service, postage prepaid,
19 first class, of notice to abutting property owners whose addresses appear in the
20 assessment records of the municipality.

21 **2. Municipal officers meet to discuss proposed discontinuance and file order of**
22 **discontinuance.** The municipal officers shall discuss a proposed discontinuance of a
23 town way or public easement at a public meeting and file an order of discontinuance with
24 the municipal clerk that specifies:

25 A. The location of the town way or public easement;

26 B. The names of abutting property owners;

27 C. The amount of damages, if any, determined by the municipal officers to be paid to
28 each abutter;

29 D. For a town way, whether or not a public easement will be retained. If the existing
30 legal rights of abutting property owners to access their property will be eliminated, a
31 public easement must be retained; and

32 E. If a public easement is to be retained:

33 (1) The extent of municipal maintenance and liability responsibilities, if any; and

34 (2) The restrictions on how the public may use the public easement, if any.

35 **3. Public hearing.** The municipal officers shall hold a public hearing on the order of
36 discontinuance of a town way or public easement filed pursuant to subsection 2.

37 **4. Approval of order of discontinuance and damage awards.** Ten or more
38 business days after the public hearing pursuant to subsection 3, the municipal legislative
39 body must vote upon the order of discontinuance submitted to it:

1 A. To approve the order of discontinuance, including the public easement and the
2 restrictions set in the order and the damage awards, and to appropriate the money to
3 pay the damages; or

4 B. To disapprove the order of discontinuance.

5 **5. Certificate of discontinuance filed.** The municipal clerk shall record an attested
6 certificate of discontinuance after a vote by the municipal legislative body under
7 subsection 4 in the registry of deeds, with the Department of Transportation and with the
8 municipality. The certificate must describe the town way or public easement and the
9 final action by the municipal legislative body. The date the certificate of discontinuance
10 is filed is the date the town way or public easement is discontinued. The registry of deeds
11 shall record a certificate of discontinuance under the name of the town way or public
12 easement, the name of the municipality and the names of the abutters.

13 An easement for public utility facilities necessary to provide or maintain service
14 remains in a discontinued town way regardless of whether a public easement is retained.
15 Upon approval by a municipal legislative body of an order to discontinue a town way and
16 retain a public easement, unless otherwise stated in the order, all remaining interests of
17 the municipality pass to the abutting property owners in fee simple to the center of the
18 way.

19 **§3026-B. Reconsideration of order of discontinuance**

20 **1. Reconsideration of discontinuance.** In the 21st year after the date on which a
21 certificate of discontinuance is filed pursuant to section 3026-A, subsection 5, the
22 municipal legislative body shall reconsider and vote regarding the discontinuance of a
23 town way or public easement pursuant to section 3026-A. If the municipal legislative
24 body disapproves the order of discontinuance, the municipal officers must initiate
25 proceedings to revise the proposed order of discontinuance pursuant to section 3026-A or
26 lay out a town way pursuant to section 3022. If the municipal legislative body has not
27 reconsidered and voted regarding the discontinuance within the 21st year since the date
28 the certificate of discontinuance was filed, the discontinuance continues, subject to future
29 action of the municipal legislative body.

30 **2. Petition by abutters.** If a municipal legislative body has not held a vote pursuant
31 to subsection 1, upon the petition of one or more abutting property owners, the municipal
32 legislative body shall reconsider and vote pursuant to section 3026-A, regarding the
33 discontinuance of the town way or public easement. After the municipal legislative body
34 has voted under this subsection, the discontinuance may be reconsidered only pursuant to
35 the municipal legislative body's procedures.

36 **Sec. 6. 23 MRSA §3027, sub-§1,** as amended by PL 1987, c. 385, §1, is further
37 amended to read:

38 **1. Vacation of ways.** ~~Where~~ When proposed town ways have been described in a
39 recorded subdivision plan and lots have been sold with reference to the plan, the
40 municipal officers, after notice to the municipal planning board or office, may, on their
41 own initiative, on petition of the abutting property owners or on petition of any person
42 claiming a property interest in the proposed way, vacate in whole or in part proposed
43 ways that have not been accepted. The municipal officers shall give best practicable

notice, as defined in section 3026 3026-A, subsection 2 1, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice shall must conform in substance to the following form:

NOTICE

(The municipal officers of) (A petition has been filed with the municipal officers of) _____ (Name of Town or City) _____ (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the _____ County Registry of Deeds, Book of Plans, Volume _____, Page _____.

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the _____ County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in _____ County in accordance with the Maine Revised Statutes, Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages, if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers shall must be paid by the petitioners, if any.

Sec. 7. 23 MRSA §3028, sub-§1, as enacted by PL 1991, c. 195, is amended to read:

1. Presumption of abandonment. ~~It~~ Except as provided by subsection 1-A, it is prima facie evidence that a town or county way 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 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. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not 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 ~~is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status~~ retains a public easement and all remaining interests of the municipality pass to the abutting property owners in fee simple to the center of the way. A way that has been abandoned under this section is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless

1 other evidence exists that shows a clear intent by the municipality or county to consider
2 or use the way as if it were a public way.

3 **Sec. 8. 23 MRSA §3028, sub-§1-A** is enacted to read:

4 **1-A. Termination through discontinuance process only.** For a town way that does
5 not meet the requirements of subsection 1 as of January 1, 2015, a municipality may
6 terminate in whole or in part any interests held by it for highway purposes only through
7 the discontinuance process pursuant to section 3026-A. This subsection is not intended to
8 modify common law regarding abandonment of a road.

9 **Sec. 9. 23 MRSA §3028, sub-§5** is enacted to read:

10 **5. Filing.** If after the effective date of this subsection the municipal officers
11 determine that a town way has been abandoned pursuant to subsection 1, the municipal
12 clerk shall file a record of this determination with the registry of deeds, the Department of
13 Transportation and the municipality. The registry of deeds shall record a document
14 regarding an abandoned town way under the name of the town way, the name of the
15 municipality and the names of the abutters.

16 **Sec. 10. 23 MRSA §3029-A** is enacted to read:

17 **§3029-A. Damage to public easement; cause of action**

18 **1. Cause of action.** An owner of property abutting a discontinued or abandoned
19 road in which a public easement exists may bring a civil action in Superior Court for
20 damages and injunctive relief against a person who causes damage to the road in a way
21 that impedes reasonable access by the property owner to the property owner's property by
22 motor vehicle as defined in Title 29-A, section 101, subsection 42.

23 **2. Damages.** Damages may be sought pursuant to subsection 1 in an amount
24 reasonably necessary to restore the road to its condition prior to the use by the person
25 against whom the action is brought.

26 **3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing
27 party, the plaintiff may be awarded reasonable attorney's fees and costs.

28 **Sec. 11. 35-A MRSA §2308**, as amended by PL 2011, c. 623, Pt. B, §9, is further
29 amended to read:

30 **§2308. Protection of utility facilities upon discontinuance of public ways**

31 In proceedings for the discontinuance of public ways, public ways may be
32 discontinued in whole or in part. The discontinuance of a town way must be pursuant to
33 Title 23, section ~~3026~~ 3026-A. Unless an order discontinuing a public way specifically
34 provides otherwise, the public easement provided for in Title 23, section ~~3026~~ 3026-A
35 includes an easement for public utility facilities and for the permitted facilities of entities
36 authorized under section 2301 to construct lines. A utility or entity may continue to
37 maintain, repair and replace its installations within the limits of the way or may construct
38 and maintain new facilities within the limits of the discontinued way, if it is used for
39 travel by motor vehicles, in order to provide utility or telecommunications service, upon
40 compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

1 list of all town ways that have been discontinued since 1965 and whether or not a public
2 easement was retained, if known; and a list of all town ways that have been abandoned
3 since 1965 and whether or not a public easement was retained, if known. The
4 municipality must publish the list on its publicly accessible website or make copies
5 available at the municipal office. The municipality must record the list at the county
6 registry of deeds and with the Department of Transportation.

7 **FISCAL NOTE REQUIRED**

8 **(See attached)**



126th MAINE LEGISLATURE

LD 1177

LR 1124(02)

An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-435)
Committee: State and Local Government
Fiscal Note Required: Yes

Fiscal Note

State Mandate - Exempted
Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil cases.
The collection of additional filing fees may also increase General Fund revenue by minor amounts.

State Mandates

| Required Activity | Unit Affected | Local Cost |
|---|---------------|--------------------|
| Municipalities will be required to conduct a public hearing, file orders of discontinuance with the registry of deeds and the Department of Transportation, provide notice to abutting property owners and hold a vote of the municipal legislative body to discontinue a town way. By January 1, 2016, municipalities must prepare a list of all town ways that are currently maintained with public funds and town ways that have been discontinued since 1965. | Municipality | Moderate statewide |

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional costs.