

MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1028, L.D. 1415, Bill, "An Act To Improve the Laws Regarding Discontinued and Abandoned Roads"

Amend the bill by striking out the title and substituting the following:

'An Act To Improve the Laws Regarding Abandoned Roads'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 23 MRSA §3028, as amended by PL 2015, c. 464, §7, is repealed.**Sec. 2. 23 MRSA §3028-A** is enacted to read:**§3028-A. Abandonment of town ways**

Beginning October 1, 2020, a town way, or portion thereof, may not be declared discontinued by abandonment unless the municipality or county where the proposed abandoned town way is situated complies with the requirements of this section. A municipality or its officials or a county or its officials are not liable for nonperformance of a legal duty with respect to a town way declared discontinued by abandonment in accordance with this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected property" means real property that abuts the town way to be declared discontinued by abandonment and real property for which the town way is the only access route.

B. "Best practicable notice" means, at minimum, the mailing of notice by the United States Postal Service, postage prepaid, first class, to affected property owners whose addresses appear in the assessment records of the municipality or county.

2. Declaration of abandonment. Municipal officers or county commissioners may vote to declare a town way discontinued by abandonment if:

1 A. For a period of 30 or more consecutive years, the town way was not kept passable
2 for the use of motor vehicles at the expense of the municipality or county. Isolated
3 acts of maintenance by the municipality or county without other evidence that shows
4 a clear intent by the municipality or county to consider or use the town way as if it
5 were a public way as defined in section 1903, subsection 11 does not negate evidence
6 that the town way was not kept passable for the use of motor vehicles; and

7 B. The municipal officers or county commissioners vote to declare the town way
8 discontinued by abandonment at a regularly scheduled meeting of the municipal
9 officers or county commissioners. If the municipal officers or county commissioners
10 vote to declare a town way discontinued by abandonment, they must also vote on
11 whether a public easement is retained.

12 A municipality or county may not declare a town way discontinued by abandonment if
13 evidence is presented to the municipal officers or county commissioners at a meeting held
14 pursuant to paragraph B or a public hearing held pursuant to subsection 4 that the
15 municipality or county received funds for any portion of the town way that is the subject
16 of the discontinuance by abandonment for more than 84 months of the period of 30 or
17 more consecutive years specified in paragraph A.

18 **3. Notification of discontinuation by abandonment.** The municipal officers or
19 county commissioners shall give best practicable notice to all affected property owners of
20 the town way to be declared discontinued by abandonment at least 30 days prior to the
21 meeting required in subsection 2, paragraph B.

22 A. The notice must include information regarding the potential retention of a public
23 easement, and:

24 (1) The affected property owners' maintenance obligations for and right of access
25 to the town way, if any;

26 (2) The right of access to the town way by the public if a public easement is
27 retained; and

28 (3) Information regarding the rights of affected property owners to enter into
29 agreements regarding maintenance of and access to that town way, including the
30 right of affected property owners to create private easements.

31 B. If the town way to be declared discontinued by abandonment is the only means of
32 access to property in an adjacent municipality or county, the municipal officers or
33 county commissioners shall cause a written notice of the meeting required in
34 subsection 2, paragraph B to be given to the municipal officers or county
35 commissioners of the adjacent municipality or county at least 30 days prior to that
36 meeting.

37 **4. Public hearing.** The municipal officers or county commissioners shall hold a
38 public hearing prior to voting to declare a town way discontinued by abandonment under
39 subsection 2 upon receipt of written request signed by at least 25% of affected property
40 owners. The written request for a public hearing must be received by the municipal clerk
41 or county clerk no more than 10 days after the notification issued pursuant to subsection
42 3.

1 **5. Status of town way discontinued by abandonment.** If the municipal officers or
2 county commissioners vote to declare a town way discontinued by abandonment, the
3 interests of the municipality or county in the abandoned town way pass as follows.

4 A. If the municipal officers or county commissioners vote to not retain a public
5 easement in the abandoned town way, all interests of the municipality or county in
6 the town way, if any, pass to the abutting property owners to the center of the town
7 way.

8 B. If the municipal officers or county commissioners vote to retain a public easement
9 in the abandoned town way, all other interests of the municipality or county in the
10 town way, if any, pass to the abutting property owners to the center of the town way
11 and the public easement retained is limited to rights of access by foot or motor
12 vehicle as defined in Title 29-A, section 101, subsection 42.

13 An easement for public utility facilities necessary to provide or maintain service remains
14 in a town way declared to be discontinued by abandonment regardless of whether a public
15 easement is retained by the municipality or county.

16 **6. Filing in registry of deeds.** If the municipal officers or county commissioners
17 vote to declare a town way discontinued by abandonment, the municipal clerk or county
18 clerk shall record an attested certificate of the discontinuance by abandonment in the
19 registry of deeds in the county where the abandoned town way is situated.

20 A. The certificate of discontinuance by abandonment may not be filed before the
21 appeal period in subsection 7 has passed or if an appeal is filed before the appeal
22 process has ended.

23 B. The certificate of discontinuance by abandonment must list the date of the vote by
24 the municipal officers or county commissioners, describe the town way and include
25 whether a public easement was retained.

26 C. The register of deeds shall record the certificate of discontinuance by
27 abandonment under the name of the town way, the name of the municipality or
28 county and the names of the affected property owners. The municipal clerk or county
29 clerk shall provide a photocopy of the certificate to the Department of Transportation,
30 Bureau of Maintenance and Operations.

31 **7. Appeal.** Notwithstanding section 3029, a person affected by a vote to declare a
32 town way discontinued by abandonment may appeal the decision by filing a written
33 appeal request within 10 days of the vote as follows:

34 A. With the municipal clerk for an appeal of a vote by the municipal officers in a
35 municipality with a board of appeals authorized to hear the appeal;

36 B. With the county clerk for an appeal of a vote by the municipal officers in a
37 municipality that does not have a board of appeals authorized to hear the appeal; or

38 C. With the county clerk for an appeal of a vote by the county commissioners.

39 Within 15 days after receiving a written appeal request filed pursuant to this subsection,
40 the municipal clerk or county clerk shall schedule a public hearing on the appeal before
41 the municipal board of appeals or county commissioners and provide written notice of the
42 hearing date to the municipal officers or county commissioners and the person filing the

appeal request. The public hearing must occur no more than 30 days after the appeal request is received.

A person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this subsection may appeal the decision to the Superior Court in the county where the town way is situated, pursuant to the Maine Rules of Civil Procedure, Rule 80B.

8. Quasi-judicial act. The determination of the municipal officers regarding the status of a town way pursuant to this section is a quasi-judicial act under Title 14, section 8104-B, subsection 2.

9. Previously abandoned town ways. This section does not alter the status of a town way abandoned by a municipality or county under the terms of former section 3028.

10. Common law abandonment. This section does not alter the ability of a town way to be abandoned under the common law presumption of abandonment.

11. Removal of obstructions. If the municipal officers or county commissioners have declared a town way discontinued by abandonment and have retained a public easement in the abandoned town way under this section, the municipality, county commissioners or an abutter on the way, acting with the written permission of the municipal officers or county commissioners, may remove any gates, bars or other obstructions in the town way.

Sec. 3. Effective date. This Act takes effect October 1, 2020.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment strikes the bill. Effective October 1, 2020, it repeals the current statute on the abandonment of town ways and enacts a new abandonment process in statute that a municipality may choose to follow to declare a town way abandoned. The optional process includes notice provisions to abutting property owners, property owners for whom the town way is the only means of access and adjacent municipalities and counties. The optional process provides for a public hearing process and an appeals process. The amendment clarifies that the public easement retained in a town way discontinued by abandonment is limited to rights of access by foot or motor vehicle, which are the limits of public easements laid out by a municipality through its eminent domain powers in the Maine Revised Statutes, Title 23, section 3022.

The fiscal note on this amendment identifies a requirement in the amendment as a potential state mandate with a moderate statewide cost. The committee finds that the provisions identified as a potential mandate do not require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue. In order to be a mandate pursuant to the Constitution of Maine, Article IX, Section 21, a provision must require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue.

1 The requirements in this amendment that a municipality or county provide notice and
2 the opportunity for hearing if the municipality or county takes the step of declaring a
3 town way abandoned does not require an expansion or modification of activities because
4 there is no requirement that a municipality or county abandon a town way or declare a
5 town way abandoned. Additionally, a municipality or county that chooses to abandon a
6 town way may do so under the common law presumption of abandonment recognized by
7 the Maine Supreme Judicial Court since 1916.

8 **FISCAL NOTE REQUIRED**

9 **(See attached)**



Approved: 01/31/20 *MAC*

129th MAINE LEGISLATURE

LD 1415

LR 1078(02)

An Act To Improve the Laws Regarding Discontinued and Abandoned Roads

Fiscal Note for Bill as Amended by Committee Amendment

Committee: State and Local Government

Fiscal Note Required: Yes

A (H-691)

Fiscal Note

Potential State Mandate - Unfunded

State Mandates

Required Activity	Unit Affected	Local Cost
When abandoning a public way, municipalities and counties must notify all affected property owners, hold a public hearing in certain situations and establish an appeals process.	Municipality County	Moderate statewide

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.