

MAINE STATE LEGISLATURE

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L.D. 1723

Date: 6-9-21

(Filing No. H-503)

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1278, L.D. 1723, "An Act Regarding Winter Maintenance on Private Roads in the Town of Windham"

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Town of Windham has provided winter maintenance service to approximately 101 private ways in the town for several years; and

Whereas, approximately 1,700 residents live on the private ways maintained in the winter by the Town of Windham and have come to rely on this service; and

Whereas, continuation of this service may expose the Town of Windham to legal liability; and

Whereas, cessation of this service may expose the Town of Windham to legal liability; and

Whereas, the Town of Windham has been unable, despite its best efforts, to find an appropriate resolution to this complicated and long-standing situation and is now asking the Legislature for assistance; and

Whereas, the Legislature recognizes the difficulties facing the Town of Windham and is willing to assist the town for a reasonable period of time; and

Whereas, part of the solution for the Town of Windham involves working with the residents living along the private ways prior to the beginning of the next winter maintenance season; and

Whereas, the span of time between 90 days after adjournment of this Legislature and the beginning of the next winter maintenance season is not sufficient time for the Town of Windham to make sufficient progress working with residents; and

COMMITTEE AMENDMENT

1 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
2 the meaning of the Constitution of Maine and require the following legislation as
3 immediately necessary for the preservation of the public peace, health and safety; now,
4 therefore,'

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

7 **Sec. 1. Definitions.** As used in this Act, unless the context otherwise indicates, the
8 following terms have the following meanings.

9 1. **Council.** "Council" means the town council of the Town of Windham.

10 2. **Designated private way.** "Designated private way" means a private way located
11 in the Town of Windham that satisfies the criteria listed in section 3, subsection 1.

12 3. **Private way.** "Private way" has the same meaning as in the Maine Revised Statutes,
13 Title 23, section 1903, subsection 10-A.

14 4. **Road association.** "Road association" means a road association created pursuant
15 to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.

16 5. **Road commissioner.** "Road commissioner" means the road commissioner, as
17 described by the Maine Revised Statutes, Title 23, section 2701, of the Town of Windham.

18 6. **Town way.** "Town way" has the same meaning as in the Maine Revised Statutes,
19 Title 23, section 3021, subsection 3.

20 7. **Winter maintenance.** "Winter maintenance" means the snow removal and surface
21 treatment, including sanding and salting, performed on designated private ways.

22 **Sec. 2. Authorization of winter maintenance on designated private ways.**
23 The council and the Town of Windham may use public equipment to perform winter
24 maintenance on a designated private way, regardless of the existence of a public easement
25 over the designated private way for the purpose of ensuring the health and safety of the
26 residents of the Town of Windham.

27 **Sec. 3. Ordinance; roster; maintenance standards; termination.** The council
28 may enact an ordinance to provide for the winter maintenance of designated private ways
29 according to this section.

30 1. **Identification of designated private ways.** The council may identify a private way
31 in the Town of Windham as a designated private way if:

32 A. The council has evidence that the Town of Windham has performed winter
33 maintenance on the private way for at least 20 years prior to the effective date of this
34 Act; and

35 B. The road commissioner has determined that the private way cannot meet standards
36 developed or required by generally applicable local ordinances for dedication and
37 acceptance of the private way as a town way pursuant to the Maine Revised Statutes,
38 Title 23, section 3025.

39 2. **Creation and maintenance of designated private way roster and map.** The
40 Town of Windham may create and maintain a roster and map of all designated private
41 ways. If a private way is included on the roster and map of designated private ways, no

1 road association or owner of property benefited by the private way may bring a claim
2 asserting that the private way has become a town way by any method or mechanism other
3 than dedication and acceptance pursuant to the Maine Revised Statutes, Title 23, section
4 3025.

5 **3. Development of basic maintenance standards.** The road commissioner may, in
6 consultation with the council, develop basic maintenance standards for designated private
7 ways that the road commissioner may use to determine the necessary maintenance a road
8 association or owners of property benefited by a private way must perform for the private
9 way to be a designated private way.

10 **4. Conditions of suspension and termination.** The Town of Windham may suspend
11 or cease to perform winter maintenance on a designated private way as follows.

12 A. The Town of Windham has no obligation to perform winter maintenance on a
13 designated private way if:

14 (1) The council or road commissioner has notified the road association or owners
15 of property benefited by the private way of maintenance necessary to satisfy the
16 road commissioner's basic maintenance standards under subsection 3 and the
17 maintenance is not performed to the road commissioner's satisfaction by
18 September 1st following the date on which notice was given; or

19 (2) Owners of property benefited by the private way have not formed a road
20 association within 2 years of the effective date of this Act or before a later date set
21 by the council.

22 Within 60 days of the creation of the roster and map of designated private ways
23 pursuant to subsection 2, the council may notify the road association or owners of
24 property benefited by a designated private way of the conditions for continued winter
25 maintenance contained in this paragraph.

26 B. A private way may be removed from the roster and map of designated private ways
27 created pursuant to subsection 2 if:

28 (1) The council accepts the private way as a town way pursuant to the Maine
29 Revised Statutes, Title 23, section 3025 and any applicable local ordinance; or

30 (2) The road association of the private way or a majority of the owners of property
31 benefited by the private way present a petition to the council for the removal of the
32 private way from the roster and map.

33 **5. Ordinance.** The council may by ordinance establish additional policies and
34 procedures to effectuate the provisions of this Act.

35 **Sec. 4. Town of Windham report.** The Town of Windham may submit a report
36 to the Joint Standing Committee on State and Local Government by February 1, 2022. The
37 report, if submitted, must include the following information:

38 A. A detailed description of the progress made by the council and the town manager
39 to conform the use of public funds to provide winter maintenance on private ways with
40 applicable constitutional and statutory laws;

41 B. An assessment by the Town of Windham fire-rescue chief regarding the use of fire-
42 rescue vehicles on private ways in the town for fire and safety protection; and

1 C. An assessment by the Town of Windham police chief regarding the use of police
2 vehicles on private ways in the town for public health and safety.

3 The joint standing committee may report out a bill based on the report to the Second
4 Regular Session of the 130th Legislature.

5 **Sec. 5. Department of Environmental Protection assessment; report.** The
6 Department of Environmental Protection shall assess whether winter maintenance by the
7 Town of Windham of its designated private ways has an environmental impact on the
8 surrounding water bodies. The department shall submit a report to the Joint Standing
9 Committee on State and Local Government by February 1, 2022 on the findings of the
10 assessment. The committee may report out a bill based on the report to the Second Regular
11 Session of the 130th Legislature.

12 **Sec. 6. Repeal.** This Act is repealed June 30, 2022.

13 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
14 takes effect when approved.'

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

17 **SUMMARY**

18 This amendment replaces the bill. It adds an emergency preamble and emergency
19 clause to the bill. It permits the Town of Windham to:

- 20 1. Continue providing winter maintenance to certain private ways in the town for
21 public health and safety reasons;
- 22 2. Create a roster and map of the private ways on which the town provides winter
23 maintenance;
- 24 3. Develop basic maintenance standards for the private ways on which the town
25 provides winter maintenance;
- 26 4. Suspend or cease to perform winter maintenance on private ways under certain
27 conditions;
- 28 5. Enact an ordinance to provide for winter maintenance of certain private ways in the
29 town or to otherwise effectuate the provisions of this bill; and
- 30 6. Submit a report to the Joint Standing Committee on State and Local Government
31 detailing the town's progress toward conforming the use of public funds for winter
32 maintenance on private ways with constitutional and statutory requirements, including
33 assessments from the town's police chief and fire-rescue chief on the connection between
34 winter maintenance on certain private ways and public health and safety.

35 The amendment prevents a road association or property owners benefited by a private
36 way receiving winter maintenance from the town from asserting a claim that the private
37 way has become a town way by any method or mechanism other than dedication and
38 acceptance pursuant to the Maine Revised Statutes, Title 23, section 3025.

39 The amendment requires the Department of Environmental Protection to assess the
40 environmental impact of winter maintenance on certain private ways in the Town of
41 Windham on the surrounding water bodies. The legislation is repealed on June 30, 2022.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



130th MAINE LEGISLATURE

LD 1723

LR 2061(02)

An Act Regarding Winter Maintenance on Private Roads in the Town of Windham

Fiscal Note for Bill as Amended by Committee Amendment *A(H-503)*
Committee: State and Local Government
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection as a result of reporting the findings of an assessment of the environmental impact of winter maintenance for certain private ways in Windham on surrounding water bodies are anticipated to be minor and can be absorbed within existing budgeted resources.