

LD 1536 An Act To Require Municipalities To Maintain Access on Public Rights-of-way

To: Members, Joint Standing Committee on State and Local Government
From: Lynne Caswell, Esq., Legislative Analyst
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SUMMARY

- A. This bill modifies the discontinuation laws found in Title 23 as follows:
1. A municipality may not retain a public easement if they confirm that all the abutting property owners have filed private easements that run with the land for purposes of travel along the way
 2. If the municipal officers are unable to verify these easements, they may discontinue the road only if:
 - a. a public easement is retained;
 - b. the public use for which the easement is retained is specified and recorded with the registry; and
 - c. the municipality provides sufficient public maintenance of the public easement to allow the specified use.
- B. This bill modifies the discontinuation by abandonment laws found in Title 23 as follows:
1. A presumption of abandonment of a way is fully rebutted and removed by evidence that records maintained by the Department of Transportation indicate that a municipality received funds under the Title 23, chapter 19, subchapter 6 based on any mileage of the way during any portion of the 30 or more consecutive years of apparent discontinuance;
 2. A municipality may not intentionally cease to maintain a way as a means of creating a presumption of abandonment and a presumption of abandonment is fully rebutted and removed by evidence that a municipality intentionally ceased maintenance as a means of creating a presumption of abandonment;
 3. A municipality may not assert a presumption of abandonment for any way that was discontinued prior to September 3, 1965 that resulted in a public easement; and
 4. A public easement may be discontinued pursuant to section 3026-A
- C. Provides damages to property or business owners if a municipality does not take down fences on the line of a public highway when determined necessary to prevent drifting of snow and then replacing the fences at the end of the season. Adds to the penalty provision in Title 23, section 3201 provision of law found at Moves a provision of law relating to the removal of snow fences along public highways from a section relating to mail routes to the section of law relating to snow removal
- D. Requires a town to maintain any public right-of-way used as part of a United States postal route in passable condition for postal service delivery. All maintenance must be in accordance with applicable United States Postal Service requirements. If the postal service route is seasonal, the right-of-way must be maintained for the applicable season and, if the mail route is year-round, it must be maintained year-round; and
- E. Provides that a failure of a town to meet the snow removal and other maintenance requirements of §3201 and §3202 is actionable and remedies specified in sections 3651 to 3655 apply.

TESTIMONY

Sponsor (Representative Keschl)

- Requires municipality to maintain public right-of-way in passable condition when used as part of a USPS route

Proponents (Roberta Manter; Clarence Ayotte; Stacey Raymond; Robin Thayer; Holly Dickinson; written only from Dan Davis and Christopher Doble)

- Constitutional issue of taking;
- public easement was to prevent landlocked property;
- towns claiming funds for roads that are discontinued/abandoned
- roads not passable for fire, ambulance or police
- Public use causes damage that abutting owners are responsible to fix

Opponents (MMA)

- Creates a state mandate
- State has encouraged municipalities to keep of public easement
- Many changes enacted in 127th

NFNA (Maine Woodland Owners, by Tom Doak)

- Legacy problem – only some of which can be fixed
- Complicated solution
- Public easement was never intended to allow public access – intent was to prevent landlocked property
- Suggestions
 - ✓ Identify date of abandonment
 - ✓ Identify location of easement
 - ✓ Encourage municipalities to consider whether an easement is necessary
 - ✓ If high benefit to public from easement, municipalities should carry the burden

PRIOR SESSIONS

See Attachment A

INFORMATION REQUESTS

Explanation of terms and processes – See Attachment B

POTENTIAL ISSUES / TECHNICAL PROBLEMS

1. State Mandate - A constitutional mandate exists if a law requires a town or county to expand or modify its activities so as to necessitate additional expenditures.
2. What is meant by the phrase in new §3202 “public right-of-way” and why is this phrase and not “public easement” being used?

FISCAL IMPACT - Preliminary (OFPR)

None provided as of May 8, 2019.