

OPTION 1 – Amend §3028

AMEND ABANDONMENT STATUTE

Sec. 1. 23 M.R.S.A. §3028 is repealed

Sec. 2. 23 M.R.S.A. §3028-A is enacted as follows:

§3028-A Abandonment of Public Ways. After October 1, 2020, a town way may not be discontinued by abandonment unless the municipality or county 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 discontinued by abandonment in accordance with this section.

1. Process of abandonment. A town way may be discontinued by abandonment if:

A. For a period of 30 or more consecutive years the town way was not kept passable for the use of motor vehicles at the expense of the municipality or county. Isolated acts of maintenance by the municipality or county without other evidence that shows a clear intent by the municipality or county to consider or use the town way as if it were a public way does not negate evidence that the way was not kept passable for the use of motor vehicles;

B. For a period of 30 or more consecutive years, the municipality or county did not receive Local Road Assistance Program funds pursuant to Title 23, ch. 19, subchapter 6 for any portion of the town way to be abandoned; and

C. The municipal officers or county commissioners vote to discontinue the way by abandonment at a regularly scheduled meeting of the legislative body. If the municipal officers or county commissioners vote to discontinue a town way by abandonment they must also vote on whether a public easement is retained.

2. Notification of proposed discontinuation by abandonment. The municipal officers or county commissioners shall give best practicable notice of the proposed discontinuation by abandonment to all abutting property owners of the town way at least 30 days prior to the meeting required in subsection 1, paragraph C. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, to abutting property owners whose addresses appear in the assessment records of the municipality or county.

A. The notice must include information regarding the potential retention of a public easement, including the abutting property owners' maintenance obligations for and right of access to the way if a public easement is retained, the right of access to the way by the public if a public easement is retained and information regarding the rights of abutting property owners to enter into agreements

regarding maintenance of and access to that way, including the right of abutting property owners to create private easements;

Commented [CL1]: Note to Subcommittee:
I added this here because the existing language in §3026 for discontinuation (See Option 2, sub-§1, ¶8) has language that is substantively similar

B. If the town way proposed to be discontinued by abandonment is the only means of access to residential property in an adjacent municipality or county, the municipal officers or county commissioners shall cause a written notice of the proposed abandonment to be published in a newspaper of general circulation in the adjacent municipality or county at least 30 days prior to the meeting required in subsection 1, paragraph C.

3. Public hearing. The municipal officers or county commissions shall hold a public hearing prior to voting whether to discontinue a town way by abandonment upon receipt of written request signed by at least 50% of the abutting property owners. The written request for a public hearing must be received by the municipal or county clerk no more than 20 days after the notification issued pursuant to subsection 2.

4. Status of public way discontinued by abandonment. If the municipal officers or county commissioners vote to discontinue a town way by abandonment, the interests of the municipality or county in the abandoned town way pass as follows:

A. If the municipal officials or county commissioners vote not to retain a public easement in the abandoned town way all interest of the municipality in the way, if any, pass to the abutting property owners to the center of the way.

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

Commented [CL2]: Note to Subcommittee:
This is the language from §3022 that sets out the scope of a public easement when it is created by a municipality. Does this address members concerns about the scope of the public easement?

5. Filing with registry of deeds. If the municipal officers or county commissioners vote to discontinue a town way by abandonment the municipal or county clerk shall record an attested certificate of the discontinuance by abandonment in the registry of deeds in the county where the abandoned way is situated.

A. The certificate may not be filed before the appeal period in section 6 has passed or if an appeal is filed before the appeal process has ended;

B. The certificate must describe the town way, whether a public easement was retained and the date of the vote by the municipal officers or county commissioners; and

C. The registry of deeds shall record the certificate under the name of the town way, the name of the municipality or county and the names of the abutting property owners. The municipal or county clerk

shall provide a photo copy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

The date the certificate is filed is the date the town way is discontinued by abandonment.

6. Appeal. Notwithstanding section 3029, any person affected by a vote to discontinue by abandonment a town way may appeal the decision by filing a written appeal request within 10 days of the vote as follows:

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

Within 15 days of receiving an appeal request filed pursuant to paragraph B or paragraph C, the county clerk shall schedule a hearing on the appeal before the county commissioners to occur no more than 30 days after the appeal request is received. The county clerk shall provide written notice of the hearing date to the municipal officers and the person or persons filing the appeal request no less than 20 days before the hearing.

Any 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 property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

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

7. Previously abandoned town ways. Nothing in this section alters the status of a town way abandoned by a municipality or county under the terms of former section 3028 provided the municipal officers or county commissioners file with the registry of deed before October 1, 2021 a record of the abandonment determination in accordance with former §3028(5) for town ways abandoned between July 29, 2016 and October 1, 2020.

Removal of obstructions. If the municipal officers or county commissioners have determined under subsection — that the way is a town way or public easement and a court has not ordered otherwise, 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 way.

Commented [CL3]: Note to Subcommittee:
It's not clear what this provision adds? Perhaps the interested parties will be able to provide an explanation.

OPTION 2 – Amend §3026-A

INCORPORATE ABANDONMENT INTO DISCONTINUATION STATUTE

Section 1. 23 MRSA § 3026-A is amended as follows:

§3026-A ABANDONMENT OR DISCONTINUANCE OF TOWN WAYS

A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality abandoning a town way after October 1, 2020 or discontinuing a town way or public easement in this State must meet the following requirements.

1. Notification of proposed abandonment or discontinuance to abutting property owners. The municipal officers shall give best practicable notice to all abutting property owners of a proposed abandonment of a town way or discontinuance of a town way or public easement at least 30 days prior to the meeting required in subsection 2. As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

A. For a proposed abandonment or discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including the abutting property owners' maintenance obligations for and the right of access to the way if a public easement is retained, under the discontinuance or retention of a public easement, the right of access to the way by the public if a public easement is retained and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the abandoned or discontinued way.

B. For a proposed abandonment or discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B do not apply to town ways that are discontinued as of October 1, 2018.

For a proposed abandonment of a town way that is the only means of access to residential property in an adjacent municipality or county, the municipal officers shall cause a written notice of the proposed abandonment to be published in a newspaper of general circulation in the adjacent municipality or county at least 14 days prior to the meeting required in subsection 2.

Commented [CL4]: Comment for Subcommittee:
This section does not apply to counties because a county's right to discontinue a road is set out in Title 23, Part 2, County Highway Law. This §3026-A is in Title 23, Part 3, Local Highway Law.

Two possible methods to retain a county's ability to abandon a public way:
- Amend §2051, in Part 2, County Highway Law to add the abandonment requirements set out in this amendment; or
- Add language, likely a new section, into this Part 2, Local Highway Law, setting out the requirements applicable to counties that seek to abandon a way in an unorganized territory.

Commented [CL5]: Note to Subcommittee:
Drafted in this way adds a timeline (30 days) to the current discontinuation process?

Commented [CL6]: Note to Subcommittee:
Do you want this requirement to be added to apply to discontinuation as well? If so, similar language would be added to sub-§1-A

1-A. Discontinuance after October 1, 2018 of a town way with abutting property not otherwise accessible. A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by property not otherwise accessible by a public way, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests.

B. After the one-year waiting period required in paragraph A, the municipal officers may:

(1) Proceed with the discontinuance process pursuant to this section, as long as a public easement is retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests have been filed with the registry of deeds, proceed with the discontinuance process without retaining a public easement.

1-B. Abandonment of a town way after October 1, 2020. A town way not abandoned in accordance with former section 3028 prior to October 1, 2020 may be abandoned by a municipality after that date if:

A. For a period of 30 or more consecutive years the town way was not kept passable for the use of motor vehicles at the expense of the municipality. Isolated acts of maintenance by the municipality without other evidence that shows a clear intent by the municipality to consider or use the town way as if it were a public way does not negate evidence that the way was not kept passable for the use of motor vehicles;

B. For a period of 30 or more consecutive years the municipality did not receive Local Road Assistance Program funds pursuant to Maine Revised Statutes, Title 23, ch. 19, subchapter 6 for any portion of the town way to be abandoned; and

C. The municipal officers vote to abandon the town way at a regularly scheduled meeting of the legislative body. If the municipal officers vote to abandon a town way they must also vote on whether a public easement is retained.

2. Municipal officers meet to discuss proposed abandonment or discontinuance and file order of abandonment or discontinuance. The municipal officers shall discuss a proposed abandonment of

a town way or discontinuance of a town way or public easement at a public meeting and file an order of abandonment or discontinuance with the municipal clerk that specifies:

- A. The location of the town way or public easement;
- B. The names of abutting property owners;
- B-1. The location of any bridge, as defined in section 562, subsection 2, on the town way or public easement and the status of negotiations with the department with respect to the disposition of the bridge pursuant to section 566, subsection 3-A;
- C. In the case of discontinuance, the amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and
- D. Whether or not a public easement is retained in the proposed abandonment or discontinuance of the town way.

~~If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance; otherwise, the public easement is retained. If a public easement is retained, all other interests of the municipality in the discontinued way, if any, pass to abutting property owners to the center of the way. If a public easement is not retained, all interests of the municipality in the discontinued way pass to abutting property owners to the center of the way.~~

Commented [CL7]: Note for Subcommittee:
This is the default provision that has changed over the years. Currently the default is for a public easement to be retained if a municipality fails to follow the current requirement in sub-§1, 1A.

Commented [CL8]: Note to Subcommittee:
This has been moved into new sub-§5-A

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

3-A. Public hearing for abandonment of a town way. The municipal officers shall hold a public hearing on the order of abandonment of a town way upon receipt of a written request signed by at least 50% of the abutting property owners of the proposed abandoned town way filed pursuant to subsection 2. The written request must be submitted to the municipal clerk no more than 20 after the meeting required in subsection 2.

4. Approval of order of abandonment or discontinuance and damage awards. The municipal legislative body must vote upon the order of abandonment or discontinuance submitted to it:

- A. To approve the order of abandonment or discontinuance and the damage awards for a discontinuance and to appropriate the money to pay the damages for a discontinuance; or
- B. To disapprove the order of abandonment or discontinuance.

The vote required by this subsection for an order to discontinue a town way or public easement must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a

town way that is not discontinued as of October 1, 2018 in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

The vote required by this subsection for an order to abandon a town way must be conducted 30 or more days after the meeting required in subsection 2, unless a public hearing is requested pursuant to subsection 3-A in which case the vote must be conducted 10 or more business days after a public hearing.

5. Certificate of discontinuance filed. [The municipal clerk shall record an attested certificate of abandonment or discontinuance after a vote by the municipal legislative body under subsection 4 in the registry of deeds. The certificate must describe the town way or public easement and the final action by the municipal legislative body. The date the certificate is filed is the date the town way or public easement is abandoned or discontinued. The registry of deeds shall record a certificate of abandonment or discontinuance under the name of the town way or public easement, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

Commented [CL9]: Note to Subcommittee:
Option 1 is different from this provision in that it delays the filing until after the appeal period has expired.

5-A. Status of abandoned town way or discontinued town way or public easement. If the municipal officers vote to abandon a town way or discontinue a town way or public easement, the interest of the municipality pass as follows.

A. If the municipal officials vote not to retain a public easement in the abandoned or discontinued town way or vote to discontinue a public easement all interests of the municipality in the way, if any, pass to the abutting property owners to the center of the way.

B. If the municipal officials vote to retain a public easement in the abandoned or discontinued town way all other interest of the municipality or county in the way, if any, pass to the abutting property owners to the center of the way. [If the municipal officers vote to retain a public easement in the abandoned town way the public easement is limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42.]

Commented [CL10]: Note to Subcommittee:
This is the language from §3022 that sets out the scope of a public easement when it is created by a municipality. Does this address members concerns about the scope of a public easement?

6. Utility easement. An easement for public utility facilities necessary to provide or maintain service remains in ~~a-an~~ abandoned or discontinued town way regardless of whether a public easement is retained. ~~Upon approval by a municipal legislative body of an order to discontinue a town way and retain a public easement, unless otherwise stated in the order, all remaining interests of the municipality, if any, pass to the abutting property owners in fee simple to the center.~~

Commented [CL11]: Note to Subcommittee:
Removed because it is redundant of language in new sub-§5-A

7. Appeal. Notwithstanding section 3029, any person affected by vote to abandon a town way or discontinue a town way or public easement may appeal the vote by filing a written appeal request within 10 days of the vote as follows:

A. The written appeal request must be filed with the municipal clerk in a municipality that has a

board of appeals authorized to hear the appeal; or

B. The written appeal request must be filed with the county clerk in a municipality that does not have a board of appeals authorized to hear the appeal.

Within 15 days of receiving an appeal request filed pursuant to paragraph B, the county clerk shall schedule a hearing on the appeal before the county commissioners to occur no more than 30 days after the appeal request is received. The county clerk shall provide written notice of the hearing date to the municipal officers and the person or persons filing the appeal request no less than 20 days before the hearing.

Any person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this subsection 6 may appeal to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

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

8. **Previously abandoned town ways.** Nothing in this section alters the status of a town way abandoned by a municipality under the terms of former section 3028 provided the municipal officers file with the registry of deed before October 1, 2021 a record of an abandonment determination in accordance with former §3028(5) for town ways abandoned between July 29, 2016 and October 1, 2020.

Section 2. 23 MRSA §3028 is repealed.