

Amend this bill by striking the title and substituting with the following:

**An Act to Improve the Laws Regarding Abandoned Roads**

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

**Sec. 1.** 23 M.R.S.A. §3028 is repealed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, or portion thereof, may not be declared 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 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 which does not abut the town way to be declared discontinued by abandonment, but for which the town way is the only access route.

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

**2. Declaration of abandonment.** A town or county may vote to declare a town way 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; and

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

If evidence is presented to the municipal officers at the meeting required in paragraph B, or at a public hearing required in subsection 4, that the municipality received Local Road Assistance Program

funds pursuant to Title 23, ch. 19, subchapter 6 for any portion of the town way to be declared discontinued by abandonment during the 30 or more consecutive year period, the municipality may not declare the town way discontinued by abandonment.

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

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

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

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

**5. Status of public way discontinued by abandonment.** If the municipal officers or county commissioners vote to declare a town way discontinued 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.

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

**6. Filing with registry of deeds.** If the municipal officers or county commissioners vote to declare a town way discontinued 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 and affected 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.

**7. Appeal.** Notwithstanding section 3029, any person affected by a vote to declare a town way discontinued by abandonment 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 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 this subsection, the municipal or county clerk shall schedule a hearing on the appeal before the municipal board of appeals or county commissioners and provide written notice of the 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.

Any person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this section 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 this 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 or under common law.

**8. 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 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 way.

### SUMMARY

This amendment strikes the entire bill and replaces the presumption of abandonment in the current law with a process for municipalities and counties to declare a town way discontinued by abandonment. The process includes notice to abutting property owners, property owners for whom the town way is the only means of access, and adjacent municipalities and counties. The amendment provides for a public hearing process and a local 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 as defined in Title 29-A, section 101, subsection 42. These limits are the same as those obtained by a municipality if it laid out a new public easement pursuant to Title 23, section 3022.