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Legislative Document

No. 1588

H.P. 1092

House of Representatives, May 9, 2017

An Act To Maintain Mail Routes and Access to Residential Structures

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HILLIARD of Belgrade. (GOVERNOR'S BILL)

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 23 MRSA §3026-A, sub-§2**, as enacted by PL 2015, c. 464, §5, is
3 amended to read:

4 **2. Municipal officers meet to discuss proposed discontinuance and file order of**
5 **discontinuance.** The municipal officers shall discuss a proposed discontinuance of a
6 town way or public easement at a public meeting and file an order of discontinuance with
7 the municipal clerk that specifies:

- 8 A. The location of the town way or public easement;
- 9 B. The names of abutting property owners;
- 10 C. The amount of damages, if any, determined by the municipal officers to be paid to
11 each abutting property owner; and
- 12 D. Whether or not a public easement is retained.

13 If a proposal includes the discontinuance of a town way without retention of a public
14 easement, that must be stated explicitly in the order of discontinuance; otherwise, the
15 public easement is retained. ~~If a public easement is retained, all other interests of the~~
16 municipality in the discontinued way, if any, pass to abutting property owners to the
17 center of the way The public easement may not be discontinued if it provides the sole
18 access to any property. If a public easement is retained, the purpose for the public
19 easement must be stated in the order and the municipality is responsible for keeping the
20 easement passable for that purpose. If a public easement is not retained, all interests of
21 the municipality in the discontinued way pass to abutting property owners to the center of
22 the way.

23 **Sec. 2. 23 MRSA §3026-B** is enacted to read:

24 **§3026-B. Maintenance of town ways providing access to residential structures**

25 Notwithstanding section 3026-A, a town may not discontinue a way on which there is
26 a residential structure if that way is the only way that provides access to that residential
27 structure. A town is required to keep passable for use by motor vehicles a way that is
28 prevented from being discontinued pursuant to this section.

29 **Sec. 3. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to
30 read:

31 **1. Presumption of abandonment.** It is prima facie evidence that a town or county
32 way not kept passable for the use of motor vehicles at the expense of the municipality or
33 county for a period of 30 or more consecutive years has been discontinued by
34 abandonment. A presumption of abandonment may be rebutted by evidence that
35 manifests a clear intent by the municipality or county and the public to consider or use the
36 way as if it were a public way or by evidence that there is a residential structure that
37 depends upon the way for its sole access as described in section 3026-B. A proceeding to
38 discontinue a town or county way may not prevent or estop a municipality from asserting
39 a presumption of abandonment. A municipality or its officials are not liable for

1 nonperformance of a legal duty with respect to such ways if there has been a good faith
2 reliance on a presumption of abandonment. Any person affected by a presumption of
3 abandonment, including the State or a municipality, may seek declaratory relief to finally
4 resolve the status of such ways. A way that has been abandoned under this section is
5 relegated to the same status as it would have had after a discontinuance pursuant to
6 section 3026, ~~except that this status is at all times subject to an affirmative vote of the~~
7 ~~legislative body of the municipality within which the way lies making that way an~~
8 ~~easement for recreational use 3026-A.~~ A presumption of abandonment is not rebutted by
9 evidence that shows isolated acts of maintenance, unless other evidence exists that shows
10 a clear intent by the municipality or county to consider or use the way as if it were a
11 public way.

12 **Sec. 4. 23 MRSA §3201** is amended to read:

13 **§3201. Removal required; damages**

14 When any ~~ways are~~ public way is blocked or encumbered with snow, the road
15 commissioner shall forthwith cause so much of ~~it~~ the snow to be removed ~~or trodden~~
16 ~~down~~ as will render ~~them~~ the way passable. The town may direct the manner of doing it.
17 In case of sudden injury to public ways or bridges, ~~he~~ the road commissioner shall
18 without delay cause them to be repaired. All damage, accruing to a person in ~~his~~ the
19 person's business or property through neglect of such road commissioner or the municipal
20 officers of such town to so render passable public ways that are blocked or encumbered
21 with snow, within a reasonable time, may be recovered of such town by a civil action.

22 **Sec. 5. 23 MRSA §3202** is amended to read:

23 **§3202. Mail routes; snow fences**

24 ~~There shall be furnished and kept in repair in each section of the town through which~~
25 ~~there is a mail route some effectual apparatus for opening ways obstructed by snow, to be~~
26 ~~used to break and keep open the way to the width of 10 feet, and the~~ Wherever there is an
27 established mail route over a right-of-way held by a municipality, the municipal officers
28 of the municipality shall ensure that the way is kept safe for the use of the mail carrier
29 throughout the year in accordance with United States Postal Service regulations. When
30 any municipality fails to keep an established mail route safe for the mail carrier,
31 responsible persons may proceed as provided under sections 3652, 3653 and 3654. All
32 damage accruing to a person, business or property through neglect of such municipal
33 officers to render the way passable for the mail carrier within a reasonable time may be
34 recovered of such municipality by a civil action. The municipal officers of towns, or any
35 road commissioner under their direction, may take down fences upon the line of public
36 highways when they ~~deem~~ determine it necessary to prevent the drifting of snow ~~therein~~
37 on those public highways, but they shall the fences must in due season be replaced, in as
38 good condition as when taken down, without expense to the owner.

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SUMMARY

This bill prohibits a municipality from discontinuing a road on which there is a residential structure that depends upon the road for its sole access and requires the municipality to plow snow from that road and keep it passable. The bill allows for the rebuttal of the presumption of abandonment of a public way if there is a residential structure that depends on the way for its sole access. The bill requires municipalities to maintain mail routes in accordance with United States Postal Service regulations.