

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Date: (Filing No. H-)

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

HOUSE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to S.P. 414, L.D. 1177, Bill, “An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group”

Amend the amendment by striking out all of the first and 2nd paragraphs after the title (page 1, lines 12 to 18 in amendment)

Amend the amendment by inserting before section 1 the following:

Sec. 1. 17 MRSA §3853-E is enacted to read:

§3853-E. Damage to public easement; discontinued or abandoned road

1. Definitions. For the purposes of this section, the following terms have the following meanings.

A. "Damage to a road" means damage to a road in a way that impedes reasonable access by motor vehicle to a property owner's property abutting the road.

B. "Motor vehicle" has the same meaning as in Title 29-A, section 101, subsection 42.

2. Damage to roads. A person who causes damage to a road that has been discontinued or abandoned pursuant to Title 23, chapter 304 but in which a public easement exists commits a Class E crime.

3. Application. This section does not apply to:

A. A landowner operating a motor vehicle on land owned by that landowner;

B. A person given permission by a landowner to operate a motor vehicle on land owned by that landowner; or

C. A law enforcement officer who, in an emergency and in the scope of that law enforcement officer's employment, operates a motor vehicle on land owned by another.'

Amend the amendment by striking out all of section 5 and inserting the following:

Sec. 5. 23 MRSA §§3026-A and 3026-B are enacted to read:

HOUSE AMENDMENT

1 **§3026-A. Discontinuance of town ways**

2 A municipality may terminate in whole or in part any interests held by it for highway
3 purposes. A municipality discontinuing a town way or public easement in this State must
4 meet the following requirements.

5 **1. Notification of discontinuance to abutting property owners and municipal**
6 **planning board.** The municipal officers shall give best practicable notice to all abutting
7 property owners and the municipal planning board or office of a proposed discontinuance
8 of a town way or public easement. As used in this subsection, "best practicable notice"
9 means, at minimum, the mailing by the United States Postal Service, postage prepaid,
10 first class, of notice to abutting property owners whose addresses appear in the
11 assessment records of the municipality.

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

16 A. The location of the town way or public easement;

17 B. The names of abutting property owners;

18 C. The amount of damages, if any, determined by the municipal officers to be paid to
19 each abutter;

20 D. For a town way, whether or not a public easement will be retained. If the existing
21 legal rights of abutting property owners to access their property in the same manner
22 as prior to discontinuance will be eliminated, a public easement must be retained; and

23 E. If a public easement is to be retained:

24 (1) The extent of municipal maintenance and liability responsibilities, if any; and

25 (2) The restrictions on how the public may use the public easement, if any.

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

28 **4. Approval of order of discontinuance and damage awards.** Ten or more
29 business days after the public hearing pursuant to subsection 3, the municipal legislative
30 body must vote upon the order of discontinuance submitted to it:

31 A. To approve the order of discontinuance, including the public easement and the
32 restrictions set in the order and the damage awards, and to appropriate the money to
33 pay the damages; or

34 B. To disapprove the order of discontinuance.

35 **5. Continuation of utility easement; other interests.** An easement for public
36 utility facilities necessary to provide or maintain service remains in a discontinued town
37 way regardless of whether a public easement is retained. Upon approval by a municipal
38 legislative body of an order to discontinue a town way and retain a public easement,
39 unless otherwise stated in the order, all remaining interests of the municipality pass to the
40 abutting property owners in fee simple to the center of the way.

1 **§3026-B. Public easements over discontinued or abandoned town ways**

2 Notwithstanding section 3028, subsection 2, if a public easement is in a discontinued
3 or abandoned town way and the public easement has not been discontinued as of January
4 1, 2016 as evidenced by approval of an order of discontinuance, the public easement is
5 deemed to have been retained by the municipality. This section does not apply to a
6 public easement that is discontinued pursuant to section 3026-A.'

7 Amend the amendment by striking out all of sections 7 to 9.

8 Amend the amendment by striking out all of section 12.

9 Amend the amendment by relettering or renumbering any nonconsecutive Part letter
10 or section number to read consecutively.

11 **SUMMARY**

12 This amendment amends Committee Amendment "A" in the following manner:

13 1. It removes the mandate preamble;

14 2. It removes the requirement that the clerk of a municipality file a record of a
15 certificate of discontinuance with the registry of deeds, the Department of Transportation
16 and the municipality;

17 3. It removes the requirement that a municipality, 21 years after a certificate of
18 discontinuance has been filed, reconsider and vote on the discontinuance;

19 4. It removes the requirement that those town ways that have not met the statutory
20 presumption of abandonment by January 1, 2015 may only be discontinued by complying
21 with the new discontinuance process proposed in the committee amendment. It also
22 removes the requirement that the clerk of a municipality that determines that a town way
23 has been determined abandoned under the old process file notice of that determination
24 with the registry of deeds, the Department of Transportation and the municipality;

25 5. It removes the requirement that a municipality develop lists of all town ways that
26 are currently maintained with public funds and that have been discontinued and
27 abandoned since 1965, publish the lists and record the lists at the appropriate county
28 registry of deeds and the Department of Transportation;

29 6. It provides that a public easement in a discontinued or abandoned road has been
30 retained if, as of January 1, 2016, there is no evidence of approval of an order of
31 discontinuance by the municipal legislative body;

32 7. It provides that a person who causes damage to a discontinued or abandoned road
33 in which a public easement exists commits a Class E crime; and
34

1 8. It clarifies the provision in the committee amendment that requires a public
2 easement to be retained if the existing legal rights of abutting property owners to access
3 their property will be eliminated. It provides that the access to the property must be in the
4 same manner as prior to the discontinuance.

5 **FISCAL NOTE REQUIRED**

6 **(See attached)**

7 SPONSORED BY: _____

8 (Representative COTTA)

9 TOWN: China