

Proposed Legislation from 2025 Abandoned and Discontinued Roads Commission Report
Presented to State and Local Government April 16, 2025

Title: An Act to Amend the Laws Governing Public Easements and Provide General Fund Allocation for the Abandoned and Discontinued Roads Commission

Sec. 1. 14 MRS §159-E is enacted to read:

§159-E. Limited liability for repairs and maintenance of a public easement

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Public easement" is defined in title 23, sections 3021 and 3022.

B. "Repairs and Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing reclaimed asphalt or grinding existing pavement for reuse; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.

2. Limited liability. An owner, lessee, or occupant of property abutting a public easement or portion thereof, including but not limited to road associations formed under Title 23, Sections 3101-3104 and their members, or an agent of the same, is not liable for personal injury, property damage or death caused a) by that owner, lessee, occupant, or agent's conduct of repairs and maintenance on that public easement in order for that that owner, lessee, or occupant to access their property over the public easement from a public way, or b) by public access use of that public easement.

3. Limitations. This section does not limit any liability that may otherwise exist for a willful or malicious creation of, or failure to guard or warn against, a dangerous condition on the public easement reasonably known to the owner, lessee, or occupant of property abutting a public easement.

4. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property to keep the public easement safe for public access use to persons entering the public easement for that purpose.

5. Landowner liability for environmental damage by others.

A. As provided by title 12, section 685-C, subsection 11 and title 38, section 347-A subsection 7, an owner, lessee, or occupant of property abutting a public easement,

including but not limited to road associations formed under Title 23, Sections 3101 = 3104 and their members, or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement in accordance with this section is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the Land Use Planning Commission and by the Maine Department of Environmental Protection and the Board of Environmental Protection, respectively, if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, or occupant of property of such property.

B. Notwithstanding title 12, section 685-C, subsection 11 and title 38, section 347-A subsection 7, an owner, lessee, or occupant of property abutting a public easement, including but not limited to road associations formed under Title 23, Sections 3101- 3104 and their members,. or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement in accordance with this section who provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, or occupant of such property is not responsible for remediating or abating the environmental damage or for the costs of such remediation or abatement.

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorney's fees, to an owner, lessee, or occupant of property abutting a public easement, including but not limited to road associations formed under Title 23, Sections 3101-3104 and their members, or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement who is found not to be liable for injury to a person or property pursuant to this section.

Sec. 2. 23 MRSA §3105-A is amended by adding a second and third blocked paragraph to read:

Further, the municipal officers and the officers of a village corporation on their own initiative, or the owner(s), tenants, or occupants of property used by them as their primary year-round residence as evidenced by their property having a current homestead exemption under Title 36, Chapter 105, Subchapter 4-B and located along one or more public easements, by petition under Title 30-A, Section 2521, may request the municipal legislative body to vote to provide a minimum level of year-round maintenance and repair for a public easement which serves as access to one or more year-round residences, up to the driveway of the last year-round residence, which minimum level of year-round maintenance shall be less than the standard for maintenance of town ways under Title 23, Section 3651, and may include annual grading, repair, maintenance, plowing, and replacement of drains and culverts as required to keep the road reasonably passable for residential access as determined by the municipality; such year-round maintenance shall continue until such time as the municipal legislative body votes to discontinue such year-round maintenance. At each intersection of such public easement with a public way or private road, the municipality or county shall install and maintain a sign reasonably visible to drivers at the entrance to the public easement, reading "Minimum Maintenance Road - Travel at Your Own

Risk." Such signs shall conform to the requirements in the latest edition of the national Manual on Uniform Traffic Control Devices (MUTCD). Specifically, these warning signs shall be a minimum 24" by 24" diamond shape with black letters being at least three inches high on a yellow retroreflective background, replicating a standard W-8 warning sign.

A municipality providing the minimum level of maintenance on a public easement hereunder shall be immune from liability for such maintenance under the Maine Tort Claims Act and the Highway Defect Act.

Sec. 3. 29-A MRS §2395, sub-§4 is amended to read:

4. Designation by counties and municipalities. County commissioners and municipal officers may designate public ways and public easements, as defined in Title 23, sections 3021 and 3022, and regardless of whether the municipality maintains or repairs the public easement, other than those in subsection 3 and impose restrictions within their respective jurisdictions similar to those made by the Department of Transportation under subsection 3. Any vehicle delivering home heating fuel or organic animal bedding material and operating in accordance with a permit issued by the Department of Transportation pursuant to this section may travel over any county or town way or public easement without a specific municipal or county permit. A municipality may impose additional restrictions for a vehicle delivering home heating fuel or organic animal bedding material to operate on public ways and public easements within that municipality but may not require a permit to operate according to those restrictions.

Sec. 4. Appropriations and Allocations

This bill would provide an ongoing \$6,500 annual general fund appropriation to reimburse members of the Maine Abandoned and Discontinued Roads Commission for expenses.

SUMMARY

This bill implements the recommendations from the 2025 Abandoned and Discontinued Roads Commission report presented to the State and Local Government Committee pursuant to Title 23, section 3036, subsection 11.