

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document.

NO. 614

H.P. 459 House of Representatives, March 4, 1987
Reference to the Committee on Transportation suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative NORTON of Winthrop. (By Request)

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Alter the Laws Regarding
2 Abandonment of Public Ways.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 23 MRSA §3028, as amended by PL 1979, c. 629, is
7 repealed and the following enacted in its place:

8 §3028. Abandonment of public ways

9 When a municipality or county asserts a claim of
10 abandonment of a way which is still by record a town
11 or county way the prima facie evidence required shall
12 be, that the town or county way was established at
13 least 40 years prior to the assertion of the claim
14 and that the town or county way has not been kept
15 passable for the use of motor vehicles at the expense

1 of the municipality or county for the 40 years next
2 prior to the assertion of the claim. A presumption
3 of abandonment may be rebutted by evidence that mani-
4 fest a clear intent by the municipality or county
5 and the public to consider or use the way as if it
6 were a public way. A proceeding to discontinue a
7 town or county way shall not prevent or estop a mu-
8 nicipality from asserting a presumption of abandon-
9 ment. No municipality or county or official thereof
10 may be liable for nonperformance of a legal duty with
11 respect to such ways if there has been a good faith
12 reliance on a presumption of abandonment. Any person
13 affected by a presumption of abandonment, including
14 the State, a county, or a municipality, may seek de-
15 claratory relief to finally resolve the status of
16 such ways. A way that has been abandoned under this
17 section shall be relegated to the same status as it
18 would have had after a discontinuance pursuant to
19 section 3026, except that the passage of the 40
20 years and a payment of \$1 shall preclude the need for
21 any additional compensation. A presumption of aban-
22 donment is not rebutted by evidence which shows iso-
23 lated acts of maintenance, unless other evidence ex-
24 ists which shows a clear intent by the municipality,
25 county or public to consider or use the way as if it
26 were a public way.

27 STATEMENT OF FACT

28 Current law states that for a road to be consid-
29 ered abandoned, it must have been established prior
30 to 1946 and not maintained for at least 30 years pri-
31 or to 1976. This bill removes specific dates and
32 states that the road must have been established at
33 least 40 years ago and not maintained for at least 40
34 years.

35 Secondly, the bill specifically removes the ne-
36 cessity for paying damages to abutting property own-
37 ers as is done in the case of discontinued roads.

38 Lastly, the bill removes the provision that a mu-
39 nicipality can make an abandoned road into an ease-
40 ment for recreational use.

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