

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1581

H.P. 1138

House of Representatives, May 9, 1989

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PLOURDE of Biddeford (BY REQUEST).

Cosponsored by Senator TWITCHELL of Oxford and Representative HASTINGS of Fryeburg.

STATE OF MAINE

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

An Act to Limit Municipalities' Responsibility to Reopen an
Abandoned Road.



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

3 **23 MRSA §3028**, as amended by PL 1979, c. 629, is further
amended to read:

5
7 **§3028. Abandonment of public ways**

9 It shall be prima facie evidence that a town or county way
11 established ~~prior to January 1, 1946, and~~ not kept passable for
the use of motor vehicles at the expense of the municipality or
13 county for a period of 30 or more consecutive years ~~next prior to~~
~~January 1, 1976,~~ has been discontinued by abandonment. A
presumption of abandonment may be rebutted by evidence that
15 manifests a clear intent by the municipality or county and the
public to consider or use the way as if it were a public way. A
proceeding to discontinue a town or county way shall not prevent
17 or estop a municipality from asserting a presumption of
abandonment. No municipality or its officials shall be liable for
19 nonperformance of a legal duty with respect to such ways if there
has been a good faith reliance on a presumption of abandonment.
21 Any person affected by a presumption of abandonment, including
the State or a municipality, may seek declaratory relief to
23 finally resolve the status of such ways. A way that has been
abandoned under this section shall be relegated to the same
25 status as it would have had after a discontinuance pursuant to
section 3026, except that this status shall be at all times
27 subject to an affirmative vote of the legislative body of the
municipality within which the way lies making that way an
29 easement for recreational use. A presumption of abandonment is
not rebutted by evidence which shows isolated acts of
31 maintenance, unless other evidence exists which shows a clear
intent by the municipality or county to consider or use the way
33 as if it were a public way.

35

37 **STATEMENT OF FACT**

39 Under current law, a presumption of abandonment attaches to
a town or county way only if the way was established prior to
41 1946 and only if the way was not kept passable for 30 consecutive
years occurring before 1976. This bill removes these
43 restrictions and provides that any town or county way not kept
passable for 30 consecutive years will be presumed abandoned.