

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 395

H.P. 275

House of Representatives, February 6, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

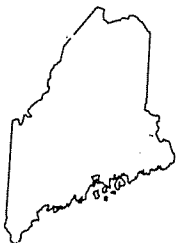
Presented by Representative FARNSWORTH of Hallowell.

Cosponsored by Representative LARRIVEE of Gorham, Representative GOULD of Greenville and Senator McCORMICK of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Clarify Ownership of Public Ways.



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

Sec. 1. 23 MRSA §3028, as amended by PL 1989, c. 395, is repealed and the following enacted in its place:

§3028. Abandonment of public ways

1. Presumption of abandonment. It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that 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 may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way.

2. Presumption of no abandonment. Subject to subsection 1, it is prima facie evidence that a town or county way has not been abandoned if the town or county accepted the way and appropriated money for and maintained the way for more than 3 years, unless the town or county has formally discontinued the way.

Sec. 2. 23 MRSA §3036 is enacted to read:

§3036. Resolution of disputes

1. Mediation required before court action. Before any party initiates a court action to resolve a dispute between a county or municipality and owners of land abutting a public way regarding the status of the public way, the parties first must seek mediation of the dispute.

2. Mediation process. The following governs the mediation required under subsection 1.

A. The parties shall obtain the services of a mediator. The Department of the Attorney General shall provide a list of mediators from which the parties may choose.

B. The parties shall participate in mediation in good faith. If the dispute is finally resolved through court action, the court may consider the failure to mediate in good faith when assessing costs.

C. If no resolution is reached after 5 days of mediation, the parties have satisfied the requirement that they seek mediation of the dispute. The parties must submit a statement to the court that they were unable to resolve the dispute through mediation.

D. If the parties resolve the dispute through mediation, the parties shall reduce the resolution to writing. The parties shall file all necessary documents with the register of deeds for the county in which the public way is located. The written resolution is binding on the parties and their successors and assigns.

STATEMENT OF FACT

This bill establishes a presumption that a public way is not abandoned by a town or county if the town or county has accepted the way and has appropriated money for and maintained the way for at least 3 years.

This bill requires that when a dispute exists regarding the status or boundaries of a public way, the town or county and the abutters must try to resolve the dispute through mediation before a court may resolve the dispute.