

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1183

S.P. 387

In Senate, March 6, 2003

An Act Regarding Abandoned Rights-of-way

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HALL of Lincoln.

Cosponsored by Senator: STRIMLING of Cumberland, Representative: PINGREE of North Haven.

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

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Sec. 1. 23 MRSA §3028, sub-§1. as enacted by PL 1991, c. 195,
is amended to read:

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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.

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SUMMARY

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This bill removes the provision of law that allows the legislative body of a municipality to vote to have an easement for recreational use over a town or county way that has been discontinued by abandonment because the town or county did not keep that town or county way passable for the use of motor vehicles for a period of 30 or more consecutive years.