

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)



STATE LAW LIBRARY
AUGUSTA, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 680

S.P. 255

In Senate, February 24, 2009

**An Act To Hold Municipal Officers Harmless for a Determination
That a Town Way or Public Easement Is Considered Abandoned**

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 HASTINGS of Oxford.
Cosponsored by Representative CROCKETT of Bethel and
Senators: HOBBS of York, NASS of York, SMITH of Piscataquis.

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

2 **Sec. 1. 23 MRSA §3028**, as repealed and replaced by PL 1991, c. 195, is amended
3 to read:

4 **§3028. Abandonment of public ways; determination of status of any town way or**
5 **public easement**

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

24 **2. Status of town way or public easement.** The determination of the municipal
25 officers regarding the status of a town way or public easement is binding on all persons
26 until a final determination of that status has been made by a court, unless otherwise
27 ordered by a court during the pendency of litigation to determine the status.

28 **3. Removal of obstructions.** If the municipal officers have determined under
29 subsection 2 that the way is a town way or public easement and a court has not ordered
30 otherwise, the municipality or an abutter on the way, acting with the written permission
31 of the municipal officers, may remove any gates, bars or other obstructions in the way.

32 **4. Quasi-judicial act.** The determination of the municipal officers regarding the
33 status of a town way or public easement pursuant to subsection 2 is a quasi-judicial act
34 under Title 14, section 8104-B, subsection 2.

35 **SUMMARY**

36 This bill ensures that municipal officers are not liable for any decision relating to an
37 abandoned road by clarifying that the determination of the municipal officers regarding
38 the status of a town way is a quasi-judicial decision under the Maine Tort Claims Act.