



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1415

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H.P. 1028

House of Representatives, March 26, 2019

### **An Act To Improve the Laws Regarding Discontinued and Abandoned Roads**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative NADEAU of Winslow.  
Cosponsored by Senator DIAMOND of Cumberland and  
Representatives: COREY of Windham, MARTIN of Eagle Lake, Senator: President  
JACKSON of Aroostook.

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

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

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

25 **Sec. 2. 23 MRSA §3028, sub-§1-A** is enacted to read:

26 **1-A. Termination through discontinuance process only.** For a town way that does  
27 not meet the requirements of subsection 1 as of January 1, 2020, a municipality may  
28 terminate in whole or in part any interests held by it for highway purposes only through  
29 the discontinuance process pursuant to section 3026-A. This subsection is not intended to  
30 modify common law regarding abandonment of a road.

31 **Sec. 3. 23 MRSA §3028, sub-§5**, as enacted by PL 2015, c. 464, §7, is amended  
32 to read:

33 **5. Filing of record of evidence and determination of abandonment.** ~~If after the~~  
34 ~~effective date of this subsection~~ the municipal officers, either on their own or after being  
35 presented with evidence of abandonment, determine that a town way has been  
36 discontinued by abandonment pursuant to subsection 1, the municipal officers shall  
37 provide in writing the evidence upon which the determination of discontinuation by  
38 abandonment was made and the municipal clerk shall file a record of this determination,  
39 the evidence upon which the determination was made and the effective date of the  
40 determination with the registry of deeds. The absence of a filing of a determination of  
41 discontinuation by abandonment may not be construed as evidence against the status of  
42 abandonment. The registry of deeds shall record a document regarding an abandoned

1 town way under the name of the town way, the name of the municipality and the names  
2 of the abutting property owners. The municipal clerk shall provide a copy of the  
3 document regarding an abandoned town way to the Department of Transportation, Bureau  
4 of Maintenance and Operations.

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### **SUMMARY**

6 Under current law, a presumption of abandonment exists if a municipality fails for a  
7 period of 30 or more years to keep a way passable for the use of motor vehicles at the  
8 expense of the municipality. This bill eliminates that presumption for ways that have not  
9 met that statutory requirement by January 1, 2020 and instead specifies that the only  
10 process that a municipality may use to terminate its interests in a public way is through  
11 the discontinuance process established in the Maine Revised Statutes, Title 26, section  
12 3026-A. This bill also amends the filing required by the clerk of a municipality following  
13 the determination of discontinuance by abandonment of a town way to require that the  
14 record filed with the registry of deeds include the evidence used by the municipality to  
15 make the determination of abandonment and the effective date of that determination of  
16 abandonment.