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

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

Sec. 1. 23 MRSA §3028, as repealed and replaced by PL 1991, c. 195, is amended to read:

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

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

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

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

SUMMARY

SP0255, LD 680, item 1, 124th Maine State Legislature
An Act To Hold Municipal Officers Harmless for a Determination
That a Town Way or Public Easement Is Considered Abandoned

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