

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 494

H.P. 333

House of Representatives, February 24, 2015

An Act Regarding the Maintenance of Easements

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 HILLIARD of Belgrade.
Cosponsored by Representative: POULIOT of Augusta.

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

2 **Sec. 1. 23 MRSA §3026-A** is enacted to read:

3 **§3026-A. Maintenance of public easements held by a municipality**

4 A public easement held by a municipality must be maintained by the municipality to
5 ensure use and enjoyment in accordance with section 3021, subsection 2.

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

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

28 **SUMMARY**

29 This bill provides that a municipality must maintain a public easement held by the
30 municipality to ensure use and enjoyment in accordance with the definition of a public
31 easement. A municipality must also maintain an easement when a municipality votes
32 affirmatively to make a way an easement for recreational use.