

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 971

7 S.P. 326

In Senate, March 3, 1983

8 Referred to the Committee on Local and County Government. Sent down
9 for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Redmond of Somerset.
Cosponsor: Senator Twitchell of Oxford.

11 STATE OF MAINE
12
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Concerning Public Easements for
18 Access to Harvested Lands and Cemeteries.
19

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

22 23 MRSA §3022, 3rd ¶, as repealed and replaced by
23 PL 1979, c. 127, §153, is amended to read:

24 The municipal officers may on petition therefor,
25 personally or by agency, lay out a public easement
26 for public access to a cemetery, for any occupant of
27 land, or for owners who have cultivated or harvested
28 land in the municipality if the land will be con-
29 nected to a town way or highway after the establish-
30 ment of the public easement.

1 STATEMENT OF FACT

2 This bill allows an owner of harvested land, as
3 well as of cultivated land, to petition a municipal-
4 ity to lay out a public easement to his lands. This
5 applies to a person harvesting wood as well as culti-
6 vating crops. The harvested land must be connected
7 to a town way or highway after the public easement is
8 established. In addition, a resident may petition a
9 municipality to lay out a public easement for public
10 access to a cemetery.

11 A public easement is defined in Title 23, section
12 3021, as "an easement held by a municipality for pur-
13 poses of public access to land or water not otherwise
14 connected to a public way, and includes all rights
15 enjoyed by the public with respect to private ways
16 created by statute prior to the effective date of
17 this Act." Under these rights established by the
18 older statutes and incorporated by the definition and
19 under the cases of Brown v. Connor, 138 Me. 63 (1941)
20 and Warchalowski v. Brown, 417A. 2d 425 (Me., 1980),
21 the general public may use the public easement, not
22 only the landowner who petitioned the town. Though
23 laid out on a landowner's petition and primarily ben-
24 efitting this land, the public easement connects with
25 the public highway system and the public has the same
26 rights in it as in a public way. In addition, a
27 public easement does not require the same maintenance
28 and upkeep by the municipality that a town way re-
29 quires.

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