

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

No. 19

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H.P. 24

House of Representatives, January 25, 1989

Reported by Representative PARADIS from the Committee to Study Utility Easements over Existing Rights-of-Way. Approved by the Legislative Council on April 17, 1988.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 19.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

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STATE OF MAINE

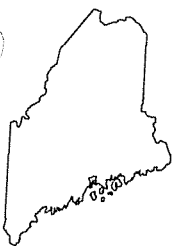
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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AN ACT to Establish Utility Rights in Certain Easements.

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

3 33 MRSA §458 is enacted to read:

5 §458. Easements; installation of utility services

7 1. Easements established on or after October 1, 1989. The  
9 owner of real estate who has a private easement which includes  
11 the right of access over a way has the right by implication to  
13 install utility services on or under the way if the easement is  
originally established by an instrument which was executed on or  
after October 1, 1989 and if the instrument granting the easement  
does not expressly exclude the right to install utility services.

15 2. Easements originally established before October 1,  
17 1989. The following shall apply to private easements originally  
established before October 1, 1989.

19 A. The owner of real estate who has a private easement  
21 which includes the right of access over a way, originally  
23 established before October 1, 1989, has the right by  
25 implication to install utility services if the instrument  
originally establishing the easement does not expressly  
exclude the right to install utility services and:

27 (1) The owner of the servient estate on October 1,  
29 1989 has conveyed that estate after October 1, 1989  
31 without expressly indicating in the instrument of  
conveyance that the right to travel does not include  
the right to install utility services; or

33 (2) Utility services serving the real estate have  
35 previously been installed along the way without  
objection or license from the person owning the  
servient estate at the time of installation.

37 B. There is a rebuttable presumption that a private  
39 easement providing in general language for a right-of-way  
41 created before October 1, 1989, includes the right to  
install utility services.

43 C. A provision in an instrument of conveyance by the owner  
45 of a servient estate pursuant to paragraph A, subparagraph  
47 (1) which indicates that a right-of-way does not include the  
49 right to install utility services prevents the implication  
provided by this subsection from occurring; however, it does  
not extinguish any right to install utility services which  
can be demonstrated by the owner of the dominant estate.

51 3. Utility services. For purposes of this section, the  
term "utility services" includes facilities necessary for the  
transmission of electricity, gas, telephone, cable television,

1 sewer, water or similar services which are presently or may in  
2 the future become available.

3  
4 4. Inconsistent rights. The right to install utility  
5 services provided by this section applies only to the extent that  
6 the installation of those services does not interfere with or is  
7 not inconsistent with the existing use of the way by others.

8  
9 5. Permission to utilities. Any owner who possesses the  
10 right to install utility services under this section may grant  
11 permission to a utility to enter upon the way to install,  
12 maintain or repair utility services. Any person who installs  
13 utility services under this section shall comply with all  
14 applicable laws, ordinances and regulations relating to the  
15 installation of utility services and with the requirements of the  
16 utility providing the service.

17  
18 6. No trespass. Neither the utility services nor their  
19 installation, maintenance or repair constitute a trespass upon a  
20 way which is subject to this section.

21  
22 7. Express limitations. A right to install utility  
23 services recognized by this section is subject to any limitations  
24 expressly included in the instrument granting the right of travel.

25  
26 8. No enlargement. Nothing in this section is intended to  
27 enlarge the dimensions of a right-of-way beyond those provided in  
28 the instrument granting the right or to authorize the  
29 installation of utility services on any property other than that  
30 comprising the way.

### 31 32 33 STATEMENT OF FACT

34  
35 This bill contains the recommendations of the Committee to  
36 Study Utility Easements over Existing Rights-of-Way which was  
37 authorized by the Legislative Council.

38  
39 The bill provides for the implication of the right to  
40 install utility services in easements created after October 1,  
41 1989. It provides that a right to install utility services may  
42 be implied if the owner of the servient estate related to an  
43 easement existing before October 1, 1989 conveys the estate  
44 without expressly indicating that the right to install utility  
45 services is excluded or if utility services have previously been  
46 installed. It also provides a rebuttable presumption that an  
47 easement providing for a general right-of-way includes the right  
to install utility services.