

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 19

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 that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Establish Utility Rights in Certain Easements.



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.