



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 494

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H.P. 333

House of Representatives, February 24, 2015

### An Act Regarding the Maintenance of Easements

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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.