

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Regarding the Maintenance of Easements**

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

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

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

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

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

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

## **SUMMARY**

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