

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 271, L.D. 383, Bill, "An Act to Clarify Maintenance of Private Roads and Ways by Municipalities"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'23 MRSA §3106 is enacted to read:

§3106. Maintenance of privately owned roads

1. Purpose; findings. This section is intended to explicitly recognize and limit a municipality's home rule authority to repair, maintain, sand, salt or remove snow from privately owned roads within the municipality. The Legislature finds that expenditures for this activity are made in furtherance of a public purpose in that it protects the health and safety of the members of the public who reside along the privately owned road by ensuring adequate access and egress for police, fire and other emergency vehicles, as well as other vehicles traveling to and from those residences.

2. Privately owned road defined. For the purposes of this section, "privately owned road" means a road, the fee of which is owned by a private person or persons, which serves as the primary means of access and egress to 2 or more private year-round residences and over which the public has no legal right of travel.

3. Authorization. Under its home rule authority, a municipality may, by vote of its legislative body, authorize the repair, maintenance, sanding, salting or removal of snow from privately owned roads within the municipality, if the requirements of subsection 4 are met, for the purpose of protecting the health and safety of those who reside along or must travel on the privately owned road.

1 4. Requirements. A municipality may repair, maintain,
2 sand, salt or remove snow from a privately owned road under this
3 section only if:

5 A. The road is not obstructed, marked or identified in any
6 manner that discourages public travel, such as gates, bars
7 or other physical barriers and signs reading "private road,"
8 "no trespassing," "residents only" or similar phrases which
9 have the effect of discouraging public travel;

11 B. The road was constructed before the effective date of
12 this section; and

13 C. The municipality has enacted an ordinance or adopted a
14 regulation that requires all roads constructed within the
15 municipality after the effective date of this section to be
16 built to certain standards.

19 5. Raising money. A municipality may raise money for the
20 repair, maintenance, sanding, salting or removal of snow from
21 privately owned roads in the manner provided in section 3551 or
22 may assess, on a proportional basis, the amount necessary to
23 perform these services against those persons who possess a
24 right-of-way to use the privately owned road in the same manner
25 provided for the apportionment of damages and benefits regarding
26 public ways under chapter 311, subchapter II.

27 6. Expenditures. Any funds available to the municipality,
28 including surplus revenue and money raised under subsection 5,
29 may be used to pay the total expenses of repairing, maintaining,
30 sanding, salting or removing snow from a privately owned road or
31 may be used to supplement money raised by those persons who
32 possess a right-of-way to use the privately owned road and
33 provided to the municipality for the purpose of paying for any
34 services provided under this section.

37 7. Liability. The Maine Tort Claims Act, Title 14, chapter
38 741, applies to a municipality and any officer, official or
39 employee of a municipality which performs repairs, maintenance,
40 sanding, salting or snow removal under this section.

41 8. No duty. This section shall not be construed to
42 establish any duty upon a municipality to repair, maintain, sand,
43 salt or remove snow from any privately owned road. Whether to
44 perform maintenance and the level of maintenance to be provided
45 is solely a decision of the municipality, except as provided for
46 in any contract between the municipality and any private party.

49 9. No interest acquired. A municipality's repairing,
50 maintaining, sanding, salting or removing of snow from a
51 privately owned road under this section does not result in the
acquisition, by prescription or otherwise, of any interest in the

1 privately owned road or the services provided by the municipality
2 under this section by any person, including the municipality, the
3 general public or the persons possessing a right-of-way over the
4 privately owned road. Section 3656 does not apply to any repairs
5 performed by a municipality under this section.'

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STATEMENT OF FACT

11 This amendment completely replaces the original bill and
12 makes the following changes to the bill.

13

14 1. The amendment changes references to a "privately owned
15 way" to a "privately owned road" to avoid confusion with other
16 terms currently used to describe various types of ways and roads
17 in the State.

19

20 2. The amendment clarifies the definition of privately
21 owned road by requiring year-round residences along the road
22 before maintenance can be performed by a municipality under the
23 bill.

23

24 3. The amendment adds the following 3 prerequisites that
25 must be met before a municipality maintains a privately owned
26 road under the bill: public access to the road must not be
27 obstructed or hindered by barriers or signs indicating that the
28 public is not permitted to travel on the road; the road must have
29 been constructed before this bill takes effect; and the
30 municipality must have road standards that all new roads must
31 meet.

33

34 4. The amendment clarifies that the municipality may
35 proportionately assess those persons who possess a right-of-way
36 to use the road for the municipality's expense in maintaining the
37 road.

37

38 5. The amendment permits municipalities to use any
39 available funds to pay for the expense of road maintenance under
40 the bill, including surplus revenue as well as tax revenue.

41

42 6. The amendment clarifies the potential liability of a
43 municipality which performs maintenance under the bill by
44 explicitly cross-referencing the Maine Tort Claims Act. This
45 ensures that a municipality's liability exposure for performing
46 maintenance on a privately owned road is no different from its
47 potential liability for maintenance on a public way.

49

50 7. Finally, the amendment adds language to clarify that a
51 municipality's maintenance of a privately owned road under the
bill does not affect any other legal obligation or right of the
municipality, the general public or those persons who possess a

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1 right-of-way to use the privately owned road. The municipality
and the public will not gain any rights to the use of the road,
3 by prescription or otherwise, and the persons possessing a
right-of-way to use the privately owned road will not gain any
5 rights against the municipality or public simply by a
municipality's maintenance of a privately owned road under this
7 bill. A municipality may choose to bind itself by contract to
perform maintenance or a certain level of maintenance, but this
9 bill does not require such a result by itself.

11 The amendment does not require towns to maintain privately
owned roads but attempts to provide a municipality with the
13 freedom to maintain privately owned roads within the municipality
as it chooses, by vote of its local legislative body. This
15 enhances local control by permitting municipalities to adapt its
maintenance practices as local conditions warrant. The amendment
17 will validate the long-standing practice of many Maine
municipalities which have performed limited maintenance on
19 privately owned roads within the municipality to protect the
health and safety of the residents along those roads while
21 ensuring that sufficient safeguards remain to protect both the
municipality and the rights of the general public.

23

Reported by the Committee on State and Local Government.
Reproduced and distributed under the direction of the Clerk of the House.

4/18/89

(Filing No. H-84)