

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 383

H.P. 271

House of Representatives, February 23, 1989

Reference to the Committee on State and Local Government suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.

Cosponsored by Representative McKEEN of Windham, Representative GREENLAW of Standish and Senator DILLENBACK of Cumberland.

STATE OF MAINE

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

An Act to Clarify Maintenance of Private Roads and Ways by Municipalities.



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

3 23 MRSA §3106 is enacted to read:

5 §3106. Maintenance of privately-owned ways

7 1. Purpose; findings. This section is intended to
9 explicitly recognize a municipality's home rule authority to
11 repair, maintain or remove snow from privately-owned ways within
13 the municipality. The Legislature finds that expenditures for
15 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 way by ensuring adequate
access and egress for police, fire and other emergency vehicles
as well as other vehicles traveling to and from those residences.

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

23 3. Authorization. Under its home rule authority, a
25 municipality may, by vote of its legislative body, authorize the
27 repair, maintenance or removal of snow from privately-owned ways
within the municipality for the purpose of protecting the health
and safety of those who reside along the privately-owned way.

29 4. Raising money. A municipality may raise money for the
31 repair, maintenance or removal of snow from privately-owned ways
33 in the manner provided in section 3551 or may apportion the
35 amount necessary to repair, maintain or remove snow from a
privately-owned way among the abutters in the same manner
provided for the apportionment of damages and benefits regarding
public ways under chapter 311, subchapter II.

37 5. Expenditures. Money raised under subsection 4 may be
39 used to pay the total expenses of repairing, maintaining or
41 removing snow from a privately-owned way or may be used as a
43 matching grant with money raised by the owners or abutters of a
privately-owned way and provided to the municipality for the
purpose of paying for any repair, maintenance or snow removal
performed under this section.

45 6. Immunity. A municipality which performs repairs,
47 maintenance or snow removal under this section is not liable for
any damage arising out of those acts.

49 7. No duty. This section shall not be construed to
51 establish any duty upon a municipality to repair, maintain or
remove snow from any privately-owned way. Whether to perform
maintenance and the level of maintenance to be provided is solely

1 a decision of the municipality. No action may be held against it
2 for failure to perform maintenance under this section or failure
3 to perform it to a certain level.

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STATEMENT OF FACT

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11 This bill clarifies the ability of municipalities to perform
12 routine summer and winter maintenance upon privately-owned ways
13 within the municipality. Under the bill, a municipality may
14 choose to raise and expend its general tax revenues for this
15 purpose or may choose to levy a special assessment upon only the
16 abutters of the privately-owned way in an amount equal to the
17 expense of maintenance performed by the municipality. A
18 municipality may also choose whether to pay for part of the
19 expense through its tax revenues and to use this money as a
20 matching grant with money raised by abutters upon the
21 privately-owned way. Since the maintenance of these ways is a
22 purely discretionary decision of the municipality under this
23 bill, the bill immunizes a municipality from any liability
24 arising out of its voluntary maintenance of privately-owned
25 ways. This bill will clarify the right of a municipality to
26 perform maintenance on privately-owned ways in order to protect
27 the health and safety of the members of the public who reside
along these ways.