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

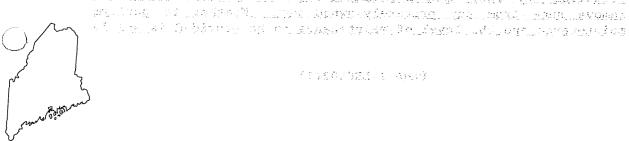
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An Act to Clarify Maintenance of Private Roads and Ways by Municipalities. - Principle 64... In Unit, Listing a consideration a

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

23 MRSA §3106 is enacted to read:

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§3106. Maintenance of privately-owned ways

- 1. Purpose; findings. This section is intended to explicitly recognize a municipality's home rule authority to repair, maintain or remove snow from privately-owned ways 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 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.
- 2. Privately-owned way defined. For the purposes of this section, "privately-owned way" means a way, 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 residences and over which the public has no right of travel.
- 3. Authorization. Under its home rule authority, a municipality may, by vote of its legislative body, authorize the 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.
- 4. Raising money. A municipality may raise money for the repair, maintenance or removal of snow from privately-owned ways in the manner provided in section 3551 or may apportion the 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.
- 5. Expenditures. Money raised under subsection 4 may be used to pay the total expenses of repairing, maintaining or removing snow from a privately-owned way or may be used as a 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 <u>6. Immunity. A municipality which performs repairs,</u>
 maintenance or snow removal under this section is not liable for
 any damage arising out of those acts.
- 7. No duty. This section shall not be construed to 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

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

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STATEMENT OF FACT

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