

# MAINE STATE LEGISLATURE

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L.D. 1974

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STATE AND LOCAL GOVERNMENT

MINORITY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1410, L.D. 1974, Bill, "An Act to Require Abutting Landowners to Pay a Fair Share of the Costs of Maintaining a Private Road"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Law Relating to Maintenance of Certain Nonpublic Roads'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 23 MRSA c. 305, sub-c. II is amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER II

MAINTENANCE OF NONPUBLIC ROADS

Sec. 2. 23 MRSA §3101, as amended by PL 1995, c. 227, §1, is further amended to read:

§3101. Call of meetings

**COMMITTEE AMENDMENT**

When 4 or more persons ~~are owners and occupants of a private way or bridge,~~ parcels of land are benefited by an eligible road as an appurtenant easement or through fee ownership of an eligible road, the owners of any 3 or more of them these parcels may make written application to a notary public to call a meeting, who may issue a warrant setting forth the time, place and purpose of the meeting, ~~a copy~~ copies of which must be posted at some public place in the town and mailed to the owners of all of the parcels benefited by that eligible road, at the addresses set forth in the municipal tax records, at least 7 days before such time. When so assembled, they may choose a ~~clerk and a surveyor~~ commissioner, to be sworn, and they may determine what repairs are necessary and the materials to be furnished or amount of money to be paid by each owner for the repairs and the manner of calling future meetings.

Sec. 3. 23 MRSA §3101-A is enacted to read:

**§3101-A. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Eligible road. "Eligible road" means a road that is not a public way and that provides vehicular access to more than one parcel of land, together with any bridges or culverts that may be a part of that road. "Eligible road" does not include:

A. A road or any portion of a road for which a road association or other similar entity has maintenance responsibility, unless that association or entity chooses to follow the procedures set forth in this subchapter;

B. A road or any portion of a road for which any deed, contract or other legally enforceable agreement assigns maintenance responsibility, unless all those affected by the deed, contract or other agreement choose to follow the procedures set forth in this subchapter;

C. A road or any portion of a road of which all the owners of parcels of land benefited by the road or portion of the road as an appurtenant easement or by fee ownership choose not to be an eligible road by so notifying any commissioner chosen pursuant to section 3101; or

D. A road or any portion of a road used primarily for removal of forest products.

Sec. 4. 23 MRSA §§3102 to 3104 are amended to read:

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**§3102. Commissioner's duties; neglect of owners to pay**

The ~~surveyer~~ commissioner chosen under section 3101, with respect to ~~such way or bridge~~ an eligible road, has the powers of a road commissioner. ~~For refusing to accept the trust or to take the oath, he forfeits \$4, to be recovered as provided in section 3104.~~ If any owner ~~or occupant~~, on requirement of the surveyer commissioner, neglects to furnish his the assessed proportion of labor, materials or money, the same may be furnished by the other owners ~~and occupants~~ and recovered of ~~him~~ the owner neglecting to pay in a civil action, together with costs of the suit and reasonable attorney's fees.

**§3103. Contracts for repair; assessments**

The owners, at such a meeting held under section 3101, may authorize a contract to be made for making and keeping ~~such way or bridge~~ an eligible road in repair by the year or for a less time; may raise money for that purpose and choose assessors to assess it on ~~such the~~ owners ~~and occupants~~ in proportion to their interests, who shall deliver their assessment with a warrant for its collection to the ~~surveyer~~ commissioner. ~~Such~~ The warrant shall must be in substance such as is prescribed for collection of town taxes. The ~~surveyer~~ commissioner shall collect the same as town taxes are collected, and be is liable for neglect of duty as town collectors are for similar neglects. The commissioner is entitled to a reasonable fee, which must be added to the assessment.

**§3104. Penalties and process**

Money recovered under sections 3102 and 3103 is for the use of ~~such the~~ owners. In any process for its recovery of the money, a description of ~~them the~~ owners in general terms as proprietors and occupants of the way or bridge owners of parcels of land benefited by an eligible road, clearly describing ~~it therein the~~ eligible road, is sufficient. ~~Such~~ The process is not abated by the death of any owner or by the transfer of his any owner's interest.'

Further amend the bill by inserting at the end before the summary the following:

**'FISCAL NOTE**

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can

be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

### SUMMARY

This amendment replaces the bill. It updates existing law regarding the mechanism by which property owners on roads not maintained by the public can maintain the road and have others who have the legal right to use the road share in the costs of maintenance. As amended, the law provides that owners of 3 or more parcels of land benefited by a road can have a notary public call a meeting of all owners of parcels benefited by the road. At the meeting, owners will elect a commissioner and determine what repairs are needed and how to assess for the costs of repair. If any owner fails to pay, the unpaid assessments and court costs and attorney's fees may be collected from the owner through a civil action.

This mechanism may not be used when maintenance responsibility is already assigned through a road association or through a contract, deed or other legally enforceable agreement, unless all involved elect to use this mechanism as an alternative. It also may not be used to pay for maintenance of a road or portion of a road used primarily for the removal of forest products.

This amendment also adds a fiscal note to the bill.