

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1356

S.P. 475

In Senate, April 9, 2013

An Act To Improve the Statutes Governing Road Associations

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GOODALL of Sagadahoc.

Cosponsored by Senators: MAZUREK of Knox, VALENTINO of York.

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

2 **Sec. 1. 23 MRSA §3101, sub-§1, ¶B**, as enacted by PL 2007, c. 625, §1, is
3 amended to read:

4 B. "Repairs and maintenance" does not include paving, except in locations where
5 limited paving is demonstrated to be a cost-effective approach for fixing an erosion
6 problem or to repair and maintain pavement existing as of July 1, 2007.
7 "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding
8 and ice control; grading and adding gravel and surface material; installing, cleaning
9 and replacing culverts; creating and maintaining ditches, drains and other storm water
10 management infrastructure; creating and maintaining sight distances on curves and at
11 intersections; and cutting brush, trees and vegetation in the right-of-way.

12 **Sec. 2. 23 MRSA §3101, sub-§2**, as amended by PL 2009, c. 239, §1, is further
13 amended to read:

14 **2. Call of meeting.** When 4 or more parcels of land are benefited by a private road,
15 private way or bridge as an easement or by fee ownership of the private road, private way
16 or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels
17 are owned by different persons, may make written application to a notary public to call a
18 meeting. The notary may issue a warrant or similar written notice setting forth the time,
19 place and purpose of the meeting. Copies of the warrant or similar written notice must be
20 mailed by means of the United States Postal Service to the owners of all the parcels
21 benefited by the private road, private way or bridge at the addresses set forth in the
22 municipal tax records at least 30 days before the date of the meeting. The notice must
23 inform the owners of the planned meeting's agenda and specify all items to be voted on,
24 including, but not limited to, all proposed budget items or amendments that will
25 determine the amount of money to be paid by each owner pursuant to subsection 5.
26 Subsequent meetings may be called in the same manner or by a commissioner or board
27 appointed at a previous meeting pursuant to subsection 5.

28 **Sec. 3. 23 MRSA §3101, sub-§4**, as enacted by PL 2007, c. 625, §1, is amended
29 to read:

30 **4. Voting.** Each parcel of land benefited by a private road, private way or bridge
31 represents one vote under this section; except that, if the bylaws of the association
32 authorize more than one vote, then each parcel may represent no more than 2 votes under
33 this subsection. The call to a meeting may state that an owner may elect in writing to
34 appoint another owner to vote in the owner's stead. Owners voting by absentee ballot
35 must be polled on all voting items that were not included in the agenda and the final tally
36 must be reported to the owners.

37 **Sec. 4. 23 MRSA §3101, sub-§4-A**, as enacted by PL 2009, c. 239, §2, is
38 amended to read:

39 **4-A. Road associations.** A road association under this subchapter through its
40 commissioner or board may address present and future repair and maintenance of a
41 private road, private way or bridge as authorized by the owners at meetings called and

1 conducted pursuant to this section until the association is dissolved by a majority vote of
2 its members.

3 **Sec. 5. 23 MRSA §3101, sub-§5**, as enacted by PL 2007, c. 625, §1, is amended
4 to read:

5 **5. Commissioner or board; assessment for repair, maintenance and other costs.**
6 The owners of parcels of land benefited by a private road, private way or bridge at a
7 meeting called pursuant to subsection 2 may choose a commissioner or board, to be
8 sworn. By a majority vote of the owners present and voting in person or by written proxy
9 or absentee ballot, the owners may determine what repairs and maintenance are necessary
10 and the materials to be furnished or amount of money to be paid by each owner for
11 repairs and maintenance and may determine the amount of money to be paid by each
12 owner for other costs, including, but not limited to, the cost of liability insurance for the
13 officers, directors and owners and costs of administration. The determination of each
14 owner's share of the total cost must be fair and equitable and based upon a formula
15 provided for in the road association's bylaws or adopted by the owners at a meeting called
16 and conducted pursuant to this section. The commissioner or board shall report the
17 outcome of all votes to all the owners by United States mail within 30 days. Special
18 assessments for emergency repairs and maintenance may be made at a duly held meeting
19 called for that purpose. Emergency repairs and maintenance are those actions necessary
20 to maintain or restore the functionality of the private road, private way or bridge.

21 **Sec. 6. 23 MRSA §3101, sub-§5-A**, as enacted by PL 2009, c. 239, §3, is
22 amended to read:

23 **5-A. Easements.** A road association under this ~~section~~ subchapter may negotiate an
24 easement for the installation of a ditch, drain, culvert or other storm water management
25 infrastructure to benefit the private road, private way or bridge. The easement must
26 specify when a ditch, drain, culvert or other storm water management infrastructure must
27 be maintained and include reasonable performance standards to guide the timing and
28 extent of its upkeep and repair. The easement must also be recorded at the registry of
29 deeds in the county in which the property subject to the easement is located. A ditch,
30 drain, culvert or other storm water management infrastructure subject to an easement
31 under this subsection must be under the control of and maintained by the road
32 association.

33 **Sec. 7. 23 MRSA §3101, sub-§9** is enacted to read:

34 **9. Insurance.** A road association under this subchapter may purchase liability
35 insurance to defend and indemnify the road association's officers, directors and owner
36 members for any and all claims of liability or violation of law concerning the private
37 road, private way or bridge and may include the costs of such insurance in the
38 determination of each owner's share of the total cost under subsection 5.

39 **Sec. 8. 23 MRSA §3102**, as amended by PL 2007, c. 625, §2, is further amended
40 to read:

1 **§3102. Commissioner's or board's duties; neglect of owners to pay**

2 The commissioner or board chosen under section 3101, with respect to the private
3 road, private way or bridge, has the powers of a road commissioner. If any owner, on
4 requirement of the commissioner or board, neglects to furnish that owner's proportion of
5 labor, materials or money, the same may be furnished by the other owners and recovered
6 of the owner neglecting to pay in a civil action, together with costs of suit and reasonable
7 attorney's fees. Such civil action may be brought in the name of and by the road
8 association created pursuant to this subchapter and the decision to bring that civil action
9 may be made by the commissioner or board or as otherwise provided for in the road
10 association's bylaws. The commissioner's or board's apportioning of the cost of repairs to
11 the road undertaken pursuant to the provisions of section 3101 may not exceed 1% of an
12 individual owner's municipal property valuation in any calendar year.

13 **Sec. 9. 23 MRSA §3103**, as amended by PL 2007, c. 625, §3, is further amended
14 to read:

15 **§3103. Contracts for repair**

16 The owners, at a meeting held under section 3101, may by a majority vote of the
17 owners present and voting in person or by written proxy or absentee ballot authorize a
18 contract to be made for making repairs to and maintaining the private road, private way or
19 bridge by the year or for a lesser time and may raise money for that purpose pursuant to
20 section 3101, subsection 5. ~~The commissioner or board shall collect the money as town~~
21 ~~taxes are collected and is liable for neglect of duty as town collectors are for similar~~
22 ~~neglects.~~

23 **Sec. 10. 23 MRSA §3104**, as amended by PL 2007, c. 625, §4, is further amended
24 to read:

25 **§3104. Penalties and process**

26 Money recovered under sections 3102 and 3103 is for the use of the owners. In any
27 notice of claim or process for its the money's recovery, a description of the owners in
28 general terms as owners of parcels of land benefited by the private road, private way or
29 bridge, clearly describing each owner's parcel of land by the book and page number of the
30 owner's deed as recorded in the county's registry of deeds and the private road, private
31 way or bridge, is sufficient. If the private road, private way or bridge is shown on a plan
32 recorded in the county's registry of deeds, the plan's recording reference is sufficient.
33 Such process is not abated by the death of any owner or by the transfer of any owner's
34 interest. Any money owed pursuant to section 3101, 3102 or 3103 is an obligation that is
35 personal to the owners of the subject parcels, jointly or severally, and also burdens the
36 parcel and runs with the land upon the transfer of any owner's interest. The commissioner
37 or board may cause to be recorded in the county's registry of deeds a notice of claim for
38 money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent
39 and may add to the amount owed the recording costs. The recording of such notice does
40 not constitute slander of title. Before recording such notice or service of process of a
41 complaint for collection in a civil action, the commissioner or board shall give the owner
42 against whom such action is to be taken written notice, in the same manner as written

1 notices of meetings are provided for in section 3101, of the intended action if the debt is
2 not paid within 20 days of the date of the written notice. This written notice to cure must
3 be sent at least 30 days before the recording of the notice of claim or the service of
4 process of the complaint for collection in a civil action.

5 **SUMMARY**

6 This bill amends the provisions of law regarding the formation, scope and function of
7 road associations formed for the purpose of repairing and maintaining a private road, a
8 private way or bridge to:

- 9 1. Expand the description of what is includable as maintenance;
- 10 2. Require that notice to members of a road association must include the amount of
11 assessment;
- 12 3. Specify what constitutes a majority vote of the road association;
- 13 4. Allow the road association to purchase liability insurance for the officers, directors
14 and owners and to allow this cost and the costs of administration to be included in the
15 assessment;
- 16 5. Require that the assessment must be based on a formula specified in the bylaws of
17 the road association or approved by the owners;
- 18 6. Specify that the cap on the assessment of 1% of an owner's property valuation
19 means the property valuation as determined by the municipality in which the property is
20 located;
- 21 7. Remove the requirement that the assessment be collected in the same manner as
22 town taxes and the imposition of a duty, and the corresponding liability for neglect of
23 duty, on the commissioner or board of the road association for the collection of the
24 assessment; and
- 25 8. Specify that the road association's commissioner or board may bring a civil action
26 to enforce an assessment and specify the procedures and requirements for filing such an
27 action.