

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 461

S.P. 215

In Senate, February 6, 2023

An Act Regarding Private Roads

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

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative HEPLER of Woolwich and
Senator: DAUGHTRY of Cumberland, Representative: SACHS of Freeport.

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

2 **Sec. 1. 23 MRSA §1903, sub-§10-A**, as repealed and replaced by PL 1981, c. 318,
3 §1, is amended to read:

4 **10-A. Private way.** "Private way" means a ~~private road, driveway or~~ public easement
5 as defined in section 3021, subsection 2.

6 **Sec. 2. 23 MRSA §1903, sub-§10-D** is enacted to read:

7 **10-D. Private road.** "Private road" means a privately owned and maintained road
8 over which the owner may restrict passage.

9 **Sec. 3. 23 MRSA §1914, sub-§10**, as amended by PL 2013, c. 529, §9, is further
10 amended to read:

11 **10. Approach signs.** Any business or facility whose principal building or structure,
12 or a point of interest, which is located on a private way or private road more than 1,000 feet
13 from the nearest public way, or is not visible to traffic from the nearest public way, private
14 way or private road, may erect no more than 2 approach signs with a total surface area not
15 to exceed 100 square feet per sign. These signs are to be located outside the public right-
16 of-way limits within 300 feet of the junction of the public ways and private ways or private
17 roads.

18 **Sec. 4. 23 MRSA c. 305, sub-c. 2**, as amended, is further amended by amending
19 the subchapter headnote to read:

20 **SUBCHAPTER 2**

21 **PRIVATE WAYS ROADS**

22 **Sec. 5. 23 MRSA §3104**, as amended by PL 2017, c. 306, §1, is further amended to
23 read:

24 **§3104. Penalties and process**

25 Money recovered under sections 3102 and 3103 is for the use of the owners. In any
26 notice of claim or process for the money's recovery, a description of the owners as owners
27 of parcels of land benefited by the private road, private way or bridge by name, clearly
28 describing each owner's parcel of land by the book and page number of the owner's deed
29 as recorded in the county's registry of deeds and the private road, private way or bridge, is
30 sufficient. If the private road, private way or bridge is shown on a plan recorded in the
31 county's registry of deeds, the plan's recording reference is sufficient. Such process is not
32 abated by the death of any owner or by the transfer of any owner's interest. Any money
33 owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners
34 of the subject parcels, jointly or severally, and also burdens the parcel and runs with the
35 land upon the transfer of any owner's interest. After June 30, 2018, any money owed
36 pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs
37 with the land upon the transfer of any owner's interest unless a notice of claim is recorded
38 in the county's registry of deeds prior to the transfer. ~~A notice of claim filed in the registry~~
39 ~~of deeds expires 18 months from the date of recording unless extended prior to the~~
40 ~~expiration by recording of a notice of extension of the notice of claim. A recorded notice~~

1 of claim may be extended for additional 18-month periods until the claim is paid. The
2 commissioner or board may cause to be recorded in the county's registry of deeds a notice
3 of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days
4 delinquent and may add to the amount owed the recording costs for filing the notice of
5 claim. The recording of such notice does not constitute slander of title. Before recording
6 such notice or service of process of a complaint for collection in a civil action, the
7 commissioner or board shall give the owner against whom such action is to be taken written
8 notice, in the same manner as written notices of meetings are provided for in section 3101,
9 of the intended action if the debt is not paid within 20 days of the date of the written notice.
10 This written notice to cure must be sent at least 30 days before the recording of the notice
11 of claim or the service of process of the complaint for collection in a civil action.

12 **Sec. 6. 23 MRSA §3107** is enacted to read:

13 **§3107. Standards**

14 A municipality shall establish minimum standards for private road construction in the
15 municipality. The standards must include a requirement for inspection of the road base by
16 the municipality prior to construction.

17 **Sec. 7. 29-A MRSA §101, sub-§58**, as enacted by PL 1993, c. 683, Pt. A, §2 and
18 affected Pt. B, §5, is repealed.

19 **Sec. 8. 29-A MRSA §101, sub-§58-A** is enacted to read:

20 **58-A. Private road.** "Private road" means a privately owned and maintained road
21 over which the owner may restrict passage.

22 **Sec. 9. 29-A MRSA §2063, sub-§14**, as amended by PL 2021, c. 86, §1, is further
23 amended by amending the first blocked paragraph to read:

24 This subsection may not be construed to limit the authority of the owner of a private way
25 road or the owner of private property to restrict or allow the operation of electric bicycles
26 on the owner's private way road or private property.

27 **Sec. 10. 29-A MRSA §2356, sub-§6**, as enacted by PL 1993, c. 683, Pt. A, §2 and
28 affected by Pt. B, §5, is amended to read:

29 **6. Private ways roads exempted.** This section does not apply to operating on private
30 ways roads.

31 **Sec. 11. 29-A MRSA §2382, sub-§7**, as enacted by PL 1993, c. 683, Pt. A, §2 and
32 affected by Pt. B, §5, is amended to read:

33 **7. Construction permits.** A permit for a stated period of time may be issued for loads
34 and equipment employed on public way construction projects, United States Government
35 projects or construction of private ways roads, when within construction areas established
36 by the Department of Transportation. The permit:

37 A. Must be procured from the municipal officers for a construction area within that
38 municipality;

39 B. May require the contractor to be responsible for damage to ways used in the
40 construction areas and may provide for:

(1) Withholding by the agency contracting the work of final payment under contract; or

(2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and

D. For construction areas, carries no fee and does not come within the scope of this section.

Sec. 12. Municipalities to develop or update list of town ways, private ways and private roads. Each municipality shall develop or update publicly available inventories relating to all known town ways, private ways and private roads within its borders and share such inventories with the Department of Transportation, Bureau of Maintenance and Operations by November 1, 2023. Boards of county commissioners, landowners, road associations, surveyors and other interested parties may share relevant information related to town ways, private ways and private roads with municipalities and the Department of Transportation, Bureau of Maintenance and Operations. By January 1, 2024, the Department of Transportation shall provide to the Joint Standing Committee on State and Local Government an update on the status of road inventories developed by municipalities under this section.

Sec. 13. Guidance. By November 1, 2024, the Department of Transportation shall create a model ordinance based on the provisions in the Woolwich Subdivision Ordinance related to private road standards to guide municipalities in complying with the Maine Revised Statutes, Title 23, section 3107.

Sec. 14. Private road construction standards. Municipalities shall establish standards for private road construction by November 1, 2025.

SUMMARY

This bill does the following.

1. It changes the definition of "private way" in the Maine Revised Statutes, Title 23 to have the same meaning as "public easement" and defines "private road." Relevant provisions of Title 23 are amended for consistency with the new definition of "private road."

2. It repeals the definition of "private way" in Title 29-A and defines "private road." Relevant provisions of Title 29-A are amended for consistency with the new definition of "private road."

3. It directs the Department of Transportation to create a model ordinance to guide municipalities on minimum standards for private road construction by November 1, 2024 and directs municipalities to develop minimum standards for private road construction by November 1, 2025.

1 4. It removes the 18-month expiration and 18-month extension option for recorded
2 notice of claims under Title 23, section 3104.

3 5. It requires municipalities to develop or update a one-time inventory of all known
4 town ways, private ways and private roads within each municipality and requires the
5 Department of Transportation, by January 1, 2024, to update the Joint Standing Committee
6 on State and Local Government on the status of those inventories by those municipalities.