

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2264

S.P. 982

In Senate, March 12, 2024

An Act to Further Clarify the Meaning of "Private Road" and "Public Easement" in Certain Provisions of Maine Law

Reported by Senator NANGLE of Cumberland for the Joint Standing Committee on State and Local Government pursuant to Public Law 2023, chapter 387, section 4.

Reference to the Committee on State and Local Government suggested and ordered printed pursuant to Joint Rule 218.

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

DAREK M. GRANT
Secretary of the Senate

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

2 **Sec. 1. 23 MRSA c. 305, sub-c. 2, headnote** is amended to read:

3 **SUBCHAPTER 2**

4 **PRIVATE WAYS ROADS AND PUBLIC EASEMENTS**

5 **Sec. 2. 23 MRSA §3101**, as amended by PL 2023, c. 387, §1, is further amended to
6 read:

7 **§3101. Call of meetings; maintenance; repairs**

8 **1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the
9 following terms have the following meanings.

10 A. ~~"Private way" means a public easement~~ "Public easement" has the same meaning
11 as defined in section 3021, subsection 2.

12 A-1. "Private road" means a privately owned way over which there is no public right
13 of access.

14 B. "Repairs and maintenance" does not include paving, except in locations where
15 pavement does not exist if approved by an affirmative vote of at least 3/4 of the owners
16 of all the parcels benefited by the private road, ~~private way public easement not~~
17 repaired or maintained year round by a municipality or bridge at a meeting called in
18 accordance with subsection 2 or in locations where limited paving is demonstrated to
19 be a cost-effective approach for fixing an erosion problem or to repair and maintain
20 pavement existing for at least 8 years. "Maintenance" includes, but is not limited to,
21 snowplowing, snow removal, sanding and ice control; grading and adding gravel and
22 surface material; installing reclaimed asphalt or grinding existing pavement for reuse;
23 installing, cleaning and replacing culverts; creating and maintaining ditches, drains and
24 other storm water management infrastructure; creating and maintaining sight distances
25 on curves and at intersections; and cutting brush, trees and vegetation in the right-of-
26 way.

27 **2. Call of meeting.** When 4 or more parcels of land are benefited by a private road,
28 ~~private way public easement not repaired or maintained by a municipality~~ or bridge as an
29 easement or by fee ownership of the private road, ~~private way public easement~~ or bridge,
30 the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by
31 different persons, may make written application to a notary public to call a meeting. The
32 notary may issue a warrant or similar written notice setting forth the time, place and purpose
33 of the meeting. Copies of the warrant or similar written notice must be mailed by means
34 of the United States Postal Service to the owners of all the parcels benefited by the private
35 road, ~~private way public easement~~ or bridge at the addresses set forth in the municipal tax
36 records at least 30 days before the date of the meeting. The notice must inform the owners
37 of the planned meeting's agenda and specify all items to be voted on, including, but not
38 limited to, all proposed budget items or amendments that will determine the amount of
39 money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be
40 called in the same manner or by a commissioner or board appointed at a previous meeting
41 pursuant to subsection 5.

1 **3. E-mail.** E-mail may be used as an alternative to United States mail for sending
2 notices and other materials under this section with the agreement of the receiving party as
3 long as the communication includes the current address and telephone number of the sender
4 for purposes of verification.

5 **4. Voting.** Each parcel of land benefited by a private road, ~~private way~~ public
6 easement not repaired or maintained by a municipality or bridge represents one vote under
7 this section; except that, if the bylaws of the association authorize more than one vote, then
8 each parcel may represent no more than 2 votes under this subsection. The call to a meeting
9 may state that an owner may elect in writing to appoint another owner to vote in the owner's
10 stead. Owners voting by absentee ballot must be polled on all voting items that were not
11 included in the agenda and the final tally must be reported to the owners.

12 **4-A. Road associations.** A road association under this subchapter through its
13 commissioner or board may address present and future repair and maintenance of a private
14 road, ~~private way~~ public easement not repaired or maintained by a municipality or bridge
15 as authorized by the owners at meetings called and conducted pursuant to this section until
16 the association is dissolved by a majority vote of its members.

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

34 **5-A. Easements.** A road association under this subchapter may negotiate an easement
35 for the installation of a ditch, drain, culvert or other storm water management infrastructure
36 to benefit the private road, ~~private way~~ public easement not repaired or maintained by a
37 municipality or bridge. The easement must specify when a ditch, drain, culvert or other
38 storm water management infrastructure must be maintained and include reasonable
39 performance standards to guide the timing and extent of its upkeep and repair. The
40 easement must also be recorded at the registry of deeds in the county in which the property
41 subject to the easement is located. A ditch, drain, culvert or other storm water management
42 infrastructure subject to an easement under this subsection must be under the control of and
43 maintained by the road association.

44 **6. Commercial or forest management purposes.** This section does not apply to a
45 private road, ~~private way~~ public easement or bridge constructed or primarily used for
46 commercial or forest management purposes.

1 **7. Immunity from suit.** A commissioner, board or owner of a parcel of land who
2 undertakes activities of a road association under this subchapter is immune from civil
3 liability in all actions by owners or lessees of other lots for the following activities:

- 4 A. The determination of repairs and maintenance to be undertaken;
- 5 B. The determination of materials to be furnished or amount of money to be paid by
6 each owner for repairs and maintenance;
- 7 C. The collection of the money from each owner; and
- 8 D. The awarding of a contract authorized under section 3103.

9 **8. Environmental violations.** Notwithstanding subsection 7, a commissioner, board
10 or owner of a parcel of land is not immune from an enforcement action for a violation of
11 law under the jurisdiction of the Department of Environmental Protection or a municipality.

12 **9. Insurance.** A road association under this subchapter may purchase liability
13 insurance to ~~defend and~~ indemnify the road association's officers, directors and owner
14 members for any ~~and all~~ claims of liability or violation of law concerning the private road,
15 private way public easement not repaired or maintained by a municipality or bridge and
16 may include the costs of such insurance in the determination of each owner's share of the
17 total cost under subsection 5.

18 **Sec. 3. 23 MRSA §3102**, as amended by PL 2013, c. 198, §8, is further amended to
19 read:

20 **§3102. Commissioner's or board's duties; neglect of owners to pay**

21 The commissioner or board chosen under section 3101, with respect to the private road,
22 private way public easement not repaired or maintained by a municipality or bridge, has
23 the powers of a road commissioner. If any owner, on requirement of the commissioner or
24 board, neglects to furnish that owner's proportion of labor, materials or money, the same
25 may be furnished by the other owners and recovered of the owner neglecting to pay in a
26 civil action, together with costs of suit and reasonable attorney's fees. Such civil action
27 may be brought in the name of and by the road association created pursuant to this
28 subchapter and the decision to bring that civil action may be made by the commissioner or
29 board or as otherwise provided for in the road association's bylaws. The commissioner's
30 or board's apportioning of the cost of repairs to the road undertaken pursuant to the
31 provisions of section 3101 may not exceed 1% of an individual owner's municipal property
32 valuation in any calendar year.

33 **Sec. 4. 23 MRSA §3103, sub-§1**, as enacted by PL 2023, c. 387, §2, is amended to
34 read:

35 **1. Contract for repair.** A contract for repairs or maintenance to the private road,
36 private way public easement not repaired or maintained by a municipality or bridge by the
37 year or for a lesser time and may raise money for that purpose pursuant to section 3101,
38 subsection 5; and

39 **Sec. 5. 23 MRSA §3104**, as amended by PL 2023, c. 387, §3, is further amended to
40 read:

41 **§3104. Penalties and process**

1 Money recovered under sections 3102 and 3103 is for the use of the owners. In any
2 notice of claim or process for the money's recovery, a description of the owners as owners
3 of parcels of land benefited by the private road, ~~private way~~ public easement not repaired
4 or maintained by a municipality or bridge by name, clearly describing each owner's parcel
5 of land by the book and page number of the owner's deed as recorded in the county's registry
6 of deeds and the private road, ~~private way~~ public easement or bridge, is sufficient. If the
7 private road, ~~private way~~ public easement or bridge is shown on a plan recorded in the
8 county's registry of deeds, the plan's recording reference is sufficient. Such process is not
9 abated by the death of any owner or by the transfer of any owner's interest. Any money
10 owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners
11 of the subject parcels, jointly or severally, and also burdens the parcel and runs with the
12 land upon the transfer of any owner's interest. After June 30, 2018, any money owed
13 pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs
14 with the land upon the transfer of any owner's interest unless a notice of claim is recorded
15 in the county's registry of deeds prior to the transfer. A notice of claim filed in the registry
16 of deeds expires 6 years from the date of recording unless extended prior to the expiration
17 by recording of a notice of extension of the notice of claim. A recorded notice of claim
18 may be extended for additional 6-year periods until the claim is paid. The commissioner
19 or board may cause to be recorded in the county's registry of deeds a notice of claim for
20 money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent
21 and may add to the amount owed the recording costs for filing the notice of claim. The
22 recording of such notice does not constitute slander of title. Before recording such notice
23 or service of process of a complaint for collection in a civil action, the commissioner or
24 board shall give the owner against whom such action is to be taken written notice, in the
25 same manner as written notices of meetings are provided for in section 3101, of the
26 intended action if the debt is not paid within 20 days of the date of the written notice. This
27 written notice to cure must be sent at least 30 days before the recording of the notice of
28 claim or the service of process of the complaint for collection in a civil action.

29 **Sec. 6. 23 MRSA §3105-A**, as enacted by PL 2009, c. 501, §2, is amended to read:

30 **§3105-A. Use of town equipment**

31 The ~~inhabitants~~ legislative body of any town or village corporation at a legal town or
32 village corporation meeting may authorize the municipal officers of the town or assessors
33 of the village corporation to use its highway equipment on ~~private ways~~ public easements
34 within such town or village corporation to plow, maintain and repair those public easements
35 to the extent directed by the legislative body and whenever such municipal officers or
36 assessors consider it advisable in the best interest of the town or village corporation for fire
37 and police protection.

38 **Sec. 7. 23 MRSA §3106, sub-§1**, as amended by PL 2023, c. 65, §1, is further
39 amended to read:

40 **1. Protection or restoration of great ponds through repairs to private roads, ways**
41 **public easements or bridges.** For the purpose of protecting or restoring a great pond, as
42 defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to
43 repair a private road, way public easement or bridge to prevent storm water runoff pollution
44 from reaching a great pond if:

- 1 A. The private road, way public easement or bridge is within the watershed of the great
2 pond;
- 3 B. The great pond:
- 4 (1) Is listed on the Department of Environmental Protection's list of bodies of
5 water most at risk pursuant to Title 38, section 420-D, subsection 3;
- 6 (2) Has been listed as impaired in an integrated water quality monitoring and
7 assessment report submitted by the Department of Environmental Protection to the
8 United States Environmental Protection Agency pursuant to the federal Clean
9 Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or
- 10 (3) Is identified as having threats to water quality in a completed watershed survey
11 that uses a protocol accepted by the Department of Environmental Protection;
- 12 C. The Department of Environmental Protection or the municipality determines that
13 the private road, way public easement or bridge is contributing to the degradation of
14 the water quality of the great pond based upon an evaluation of the road, way public
15 easement or bridge using a protocol accepted by the department;
- 16 D. The repair complies with best management practices required by the Department
17 of Environmental Protection; and
- 18 E. The private road, way public easement or bridge is maintained by a road association
19 organized under this subchapter or Title 13-B.

20 **Sec. 8. 23 MRSA §3106, sub-§1-A**, as enacted by PL 2023, c. 65, §1, is amended
21 to read:

22 **1-A. Protection or restoration of protected natural resources through repairs to**
23 **certain private roads, ways public easements, bridges or storm water management**
24 **systems.** For the purpose of protecting or restoring a protected natural resource, a
25 municipality or a regional community and economic development organization may
26 appropriate funds to repair a private road, way public easement, bridge or storm water
27 management system to prevent storm water runoff pollution from reaching a protected
28 natural resource if:

- 29 A. The private road, way public easement, bridge or storm water management system
30 is within the watershed of the protected natural resource or is located within or
31 immediately adjacent to the protected natural resource;
- 32 B. With respect to a protected natural resource that is a great pond only, the great pond
33 satisfies the criteria listed in subsection 1, paragraph B;
- 34 C. The Department of Environmental Protection, the municipality or the regional
35 community and economic development organization determines that the private road,
36 way public easement, bridge or storm water management system is contributing to the
37 degradation of water quality within or immediately adjacent to the protected natural
38 resource based upon an evaluation of the road, way public easement, bridge or storm
39 water management system using a protocol accepted by the department;
- 40 D. The repair complies with best management practices required by the Department
41 of Environmental Protection; and

1 E. The private road, ~~way~~ public easement, bridge or storm water management system
2 is located wholly or partially within or immediately adjacent to a military installation
3 closed pursuant to the federal Defense Base Realignment and Closure Act of 1990.

4 **Sec. 9. 29-A MRSA §2322, sub-§9**, as enacted by PL 1999, c. 331, §1, is repealed.

5 **Sec. 10. 29-A MRSA §2323, sub-§1**, as amended by PL 2009, c. 484, §11, is
6 further amended to read:

7 **1. Use of helmet.** A person under 16 years of age who is an operator or a passenger
8 on a bicycle or an operator of roller skis on a public ~~roadway~~ way or a public bikeway shall
9 wear a helmet of good fit, positioned properly and fastened securely upon the head by
10 helmet straps.

11 **SUMMARY**

12 This bill is reported out by the Joint Standing Committee on State and Local
13 Government pursuant to Public Law 2023, chapter 387, section 4 for the sole purpose of
14 having a bill printed that can be referred back to the committee for public hearing and
15 subsequent processing in the normal course of committee work. The bill is based on the
16 legislation proposed by the Maine Abandoned and Discontinued Roads Commission in its
17 report dated January 5, 2024. The bill changes the term "private way" to "public easement"
18 and defines "private road" in the laws governing repairs and maintenance of public
19 easements and private roads.