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Legislative Document

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S.P. 80

In Senate, January 27, 2021

**An Act To Define the Responsibilities of Residential Property
Owners for the Maintenance and Repair of Private Roads**

Received by the Secretary of the Senate on January 25, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 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 BAILEY of York.
Cosponsored by Senators: BRENNER of Cumberland, CURRY of Waldo, RAFFERTY of York.

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

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

3 **SUBCHAPTER 2-A**

4 **MAINTENANCE OF PRIVATE ROADS THAT BENEFIT RESIDENTIAL**
5 **PROPERTIES**

6 **§3121. Responsibility for cost of repairs to and maintenance of private roads that**
7 **benefit residential properties**

8 **1. Cost sharing.** If more than one property shares a common benefit from a private
9 road, each property owner who shares the common benefit is responsible for a share of the
10 cost of reasonable and necessary repairs to and maintenance of that private road determined
11 pursuant to the terms of any agreement entered into to determine the share of the cost of
12 reasonable and necessary repairs to and maintenance of the private road, any deed
13 restriction, covenant or declaration applicable to the benefited property, any road
14 association created pursuant to this chapter or otherwise or any method elected under
15 section 3101, when applicable. In the absence of any such agreement, restriction, covenant,
16 declaration, road association or method elected under section 3101, each residential
17 property owner, after reasonable due process and notice, shall share equally in the cost of
18 reasonable and necessary repairs to and maintenance of the private road when the private
19 road is the primary means of access to the benefited property. For purposes of this section,
20 each residential property may be assessed only one share toward the collective cost of
21 repairs and maintenance regardless of whether there are multiple owners of record for one
22 property.

23 **2. Repairs and maintenance defined.** For the purposes of this section, "repairs and
24 maintenance" has the same meaning as set forth in section 3101, subsection 1, paragraph
25 B.

26 **3. Enforcement.** If a residential property owner fails to pay that owner's share of the
27 cost of reasonable and necessary repairs to and maintenance of the private road in
28 accordance with subsection 1, after a demand in writing, a legal claim for payment of the
29 amount owed may be brought against that owner by a residential property owner or owners
30 who share a common benefit in the road, either jointly or severally.

31 **4. Conflict.** In the event of any conflict between the provisions of this section and an
32 agreement, restriction, covenant, declaration, road association or method elected in section
33 3101 existing on or entered into after the effective date of this section, the terms of the
34 agreement, restriction, covenant, declaration, road association or method elected in section
35 3101 control.

36 **5. Exceptions.** This section does not apply to:

37 A. A private road constructed or primarily used for commercial or forest management
38 purposes; or

39 B. A property owner who issues a ground lease to a 3rd party who maintains a
40 residence on the subject property. As used in this section, "ground lease" means an

1 arrangement under which a property owner leases only land to a lessee and the lessee
2 retains the rights to use the land and any improvements the lessee makes for the term of the
3 lease.

4 **SUMMARY**

5 This bill addresses the responsibility for the repair and maintenance of private roads
6 that benefit residential properties. It is limited in application to residential properties only.
7 Unless there is an agreement, deed restriction, covenant or declaration or road association
8 that specifies the cost to be paid by each owner of a benefited property, the cost is shared
9 equally by the benefited properties. Each residential property is subject to cost sharing, not
10 each residential property owner; each residential property is assessed one share of the
11 collective costs of repairs and maintenance regardless of whether there are multiple owners
12 of record for that property. An owner who fails to comply may be forced to comply through
13 an action brought by other owners on the private road.

14 The bill uses the definition of "repairs and maintenance" provided in the law that
15 applies to road associations.

16 The provisions do not apply to a private road constructed or used primarily for
17 commercial or forest management purposes or to a property owner who issues a ground
18 lease to a 3rd party who maintains a residence on the subject property. "Ground lease" is
19 defined for the purposes of this law as an arrangement under which a property owner leases
20 only land to the lessee and the lessee retains the rights to use the land and any improvements
21 the lessee makes for the term of the lease.