

Good afternoon, Senator Carney, Representative Kuhn and members of the Judiciary Committee. I am Raymond Bersch and I am a director of the Maine Alliance for Road Associations. We are a Maine nonprofit that advocates for those living along private roads throughout the state of Maine. I am here this afternoon to offer our support for the passage of LD 994 which makes important and useful enhancements to Title 23 Section 3121-

The passage of Section 3121 was strongly supported by the residential lending and real estate communities. It provides a safe harbor for residential lenders applying secondary mortgage market underwriting criteria to loans for purchasing homes fronting on private roads.

In its current form, Section 3121 makes a powerful statement that is important to both the lending community and the individual home owner living on a private road whether the home was purchased with or without a mortgage. Paragraph 1 reads:

“.....each property owner who shares the common benefit is responsible for a share of the cost of reasonable and necessary repairs to and maintenance of that private road....”

That is what Section 3121 is all about and that is a very powerful statement.

For the lending community the purpose is clear – owners must contribute to maintain the road but for the property owner achieving that purpose is not clear at all because while the statute says **a legal claim for payment of the amount owed may be brought against that owner not paying**, it offers absolutely no other guidance.

LD 994 offers guidance intended to assist property owners as follows:

1. Declares a payment is late if not made within 30 days of its written notice. A particular benefit to owners on roads with just two, three or four residences assuring they need not suffer extended delays before seeking to recover payments due;
2. Defines what the notice of payment must include: the name of the vendor, date of payment and the purpose of the repair or maintenance. Vitally important to the owner being billed;
3. Defines where a notice must be sent: “at that address set forth in the municipal tax records.” This is the address used by municipalities to send tax bills and also required by the Private Ways Act;
4. It ensures that an owner seeking payment can be reimbursed for the costs of collection: interest from the date of making the written demand, filing fees and other costs including reasonable attorney's fees. Important for an owner making a claim. But it also puts the nonpaying owner on notice to pay or risk also paying for the cost of collection including attorney fees;

Adding the enhancements outlined in LD 994 improves the statute not only by providing guidance and certainty to property owners along private roads but also to the courts that must judge the validity of claims, and frankly, even to lenders that may take possession by foreclosure. The Maine Alliance for Road Associations supports the passage of LD 994 and stands ready to assist or respond to questions. Thank you for your time.