

Senator Carney, Representative Harnett and members of the Joint Standing Committee on Judiciary,

In anticipation of your work session on LD 192 (“An Act to Define the Responsibilities of Residential Property Owners for the Maintenance and Repair of Private Roads”), we want to address several issues raised during the hearing and in written testimony. We hope this information is helpful in your deliberations and look forward to addressing any other questions you may have. Thank you for your consideration of this important legislation.

ISSUE 1: Senator Keim asked what effect this bill would have on existing agreements and whether the default would incentivize people to abandon existing agreements?

The proposed bill expressly addresses this issue in Sub-Section 4: in the event of a conflict between an existing or new agreement, and the default statute, the agreement controls. Thus, there is no incentive to break an existing agreement in favor of the default statute because the existing agreement controls despite the default statute. Additionally, Sub-Section 3 provides a new private right of action to aggrieved owners thereby strengthening their legal options beyond current contractual claims.

ISSUE 2: Would seasonal residents now be made to pay for plowing and maintenance if they are not currently?

As stated above, Sub-Section 4 maintains existing or new agreements in favor of the default statute thus, if the current agreement does not have seasonal residents paying for plowing and maintenance then they would not be required to do so as a result of this bill’s passage.

ISSUE 3: D. Gordon Mott asked: “Would the term “residential property” refer only to parcels where principal residences are located (including vacant lots where such residences are intended)? Or would it also include parcels where there are secondary camps? Is a definition of “residential property” needed?”

Although not defined in Title 23, “residential property” is defined under 33 MRS Section 171(6) which says “real estate consisting of one or not more than 4 residential dwelling units.” Using this definition, seasonal camps would be included but vacant lots would not.

ISSUE 4: D. Gordon Mott asked: “Should it be necessary in order to apply the provisions in LD 192 that the owners who benefit own rights-of-way on the road?”

The bill applies to properties that share a “common benefit” to the private road. The current statutory provision does not require deeded access or ownership of the right of way and therefore, this bill would not impose any additional requirements.

ISSUE 5: D. Gordon Mott asked: “Could requiring shared costs on a private road where landowners are being given passage by permission and there is no deeded right-of-way possibly lead to a record from which support for acquisition of a right-of-way by customary use may be gained?”

The phrase "right of way by customary use" appears to be referring to a prescriptive easement (or adverse possession in 14 MRS 812). In either case, this only applies to use that is "adverse" to the owner of the land. If the owner of the land grants permission, that makes the use NOT adverse, and therefore prevents establishment of a right by prescription. See Jordan v Shea 791 A.2d 116 (Me. 2002) paragraph 24. Furthermore, the bill does not add any additional rights of "use" to the road.

ISSUE 6: D. Gordon Mott proposed a complex scenario.

We do not believe this bill applies to his scenario. He mentions that the road he has in mind only gets repaired "when some landowners need to use the road for commercial purposes." Between this and some of his earlier comments on seasonal camps and roads that are not owned by the owners of the camps, he appears to be talking about the situation covered by the exception in Subsection 5(A): "A private road constructed or primarily used for commercial or forest management purposes;" and the exception in Subsection 5(B): "A property owner who issues a ground lease to a 3rd party who maintains a residence on the subject property. As used in this section, "ground lease" means an arrangement under which a property owner leases only land to a lessee and the lessee retains the rights to use the land and any improvements the lessee makes for the term of the lease."

Even so, there is nothing in the bill that would make only the owners of year-round residences responsible for the entire cost of maintenance.