

HOUSE No. 2957

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas J. Calter

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the maintenance of private roads, bridges and amenities in municipalities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>1/15/2015</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/3/2015</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2015</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/4/2015</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>	<i>2/4/2015</i>

HOUSE No. 2957

By Mr. Calter of Kingston, a petition (accompanied by bill, House, No. 2957) of Thomas J. Calter and others for legislation to ensure the proper maintenance of roads, bridges and other amenities that are privately owned. Transportation.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the maintenance of private roads, bridges and amenities in municipalities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Chapter 84 of the General Laws shall be amended by striking out
2 sections 12, 13 and 14 and inserting in place thereof the following four sections:

3 Section 12. Definitions. For the purposes of sections 12A through 14 of this
4 chapter, the following terms shall have the following meanings:

5 “Benefited land” shall mean shall mean the land owned by a proprietor or
6 rightful user which land has an appurtenant right to use a private way, bridge or common
7 amenity that is not maintained or repaired by a city or town or other governmental entity or
8 authority.

9 “Bridge” shall mean a private bridge, whether paved or unpaved, comprising a
10 portion of a private way and which is not maintained or repaired by a city or town or other
11 governmental entity or authority.

“Common amenity” shall mean private parks, buildings, recreational facilities, beaches and the like, privately owned utility lines and appurtenances, and any and all appurtenances to private ways, bridges and other common amenities including but not limited to roadway rights of way, drainage, abutments, slopes, ramps and approaches, and in each case intended for the use by property owners in a private subdivision or other area comprised of multiple privately owned parcels of land and which are not maintained or repaired by a city or town or other governmental entity or authority.

“Common association” or “association” shall mean a governing or managing body established for the purpose of maintaining a private way, bridge or common amenity, and for which its members are all owners of benefited land.

“Maintenance process” shall mean the process for (i) maintenance and repair of private ways, bridges and common amenities, (ii) contribution and collection of funds for such maintenance and repair from proprietors and rightful users having the lawful right to use such private ways, bridges and common amenities, (iii) making assessments on account thereof and increasing or decreasing such assessments from time to time, (iv) establishing liens for unpaid assessments, and (v) enforcing the obligation of proprietors and rightful users to pay such assessments whether through foreclosure of such liens or otherwise.

“Prior recorded instrument” shall mean an instrument recorded prior to the effective date of sections 12A through 14 of this chapter, which instrument was recorded in connection with the establishment of a private way, bridge or common amenity or was subsequently recorded with the consent of all proprietors or rightful users having the lawful right to use such private way, bridge or common amenity.

“Private way” shall mean a private street, road or other way, whether paved or unpaved, intended primarily for the use of vehicles and which is not maintained or repaired by a city or town or other governmental entity or authority.

“Proprietor” shall mean the fee owner of land abutting a private way, bridge or common amenity and having an appurtenant right to use the private way, bridge or common amenity.

“Recorded” shall refer to an instrument or document recorded with the registry of deeds in accordance with chapter 183 or registered with the registry district of the Land Court in accordance with chapter 185.

“Rightful user” shall mean any fee owner of land other than a proprietor having a right appurtenant to such land to use a private way, bridge or common amenity by easement, grant, implication or otherwise.

“Servitude” or “equitable servitude” shall mean an obligation of a proprietor or rightful user, whether such obligation is actual or implied, to participate financially or otherwise in the maintenance of private ways, bridges or common amenities.

Section 12A. Meeting of proprietors and rightful users of private ways, bridges or common amenities. If four or more persons are the proprietors or rightful users of a private way, bridge, or common amenity that is not governed or managed by a written and recorded document, then any three or more of them may call a meeting for the purpose of establishing a maintenance process for such private way, bridge or common amenity, or for the purpose of establishing a common association, or both, by mailing notice of the date, time and place of the meeting via first class mail, postage prepaid, to each proprietor and rightful user of the private

56 way, bridge or common amenity that is the subject of the proposed maintenance process or
57 common association at least 14 days before the time appointed for the meeting and addressed to
58 those persons and addresses appearing in the records of the assessor for the city or town in which
59 the benefited land owned by the proprietors and rightful users is located, and by publishing a
60 copy of said notice at least once, not less than 14 days before the day of the meeting, in a
61 newspaper with general circulation in the city or town where the benefited land lies.

62 The maintenance process, or the common association, its initial board of
63 directors, and its terms and provisions as set forth in Section 14.e of this chapter, shall be created
64 upon a vote of the majority of the proprietors and rightful users in attendance at the meeting,
65 whether personally appearing or by written and signed instruction or proxy. Once the
66 association has been created, then all proprietors and rightful users, including those not in
67 attendance at the meeting, shall automatically become association members and subject to the
68 terms and provisions of the common association.

69 Section 13. Equitable servitude created for maintenance and repair of private
70 ways, bridges and common amenities. Notwithstanding any general law or special law to the
71 contrary, an obligation imposed by a prior recorded instrument or otherwise for proprietors or
72 rightful users to be responsible for or to participate financially or otherwise in the maintenance
73 and repair of private ways, bridges, or common amenities shall be deemed to have created an
74 equitable servitude and not a condition or restriction.

75 The creation of a private way, bridge, or common amenity requiring maintenance
76 or repair shall be deemed to create a servitude for the maintenance or repair of the private way,
77 bridge, or common amenity. Such servitude shall continue as long as the need for maintenance

or repair continues or as long as the private way, bridge, or common amenity remains private and is not maintained or repaired by a city or town or other governmental entity or authority.

Section 14. Process for maintenance and repair of private ways, bridges and common amenities; association of proprietors and rightful users; assessments and liens.

a. Duration of obligation. Notwithstanding any general law or special law or any provision of any recorded instrument to the contrary, the obligation of any proprietors or rightful users of any private ways, bridges or common amenities to maintain or repair or contribute to the maintenance or repair of such private ways, bridges, or common amenities shall continue as long as the lawful right to use such private ways, bridges or common amenities continues and as long as the private ways, bridges or common amenities remain private and are not maintained or repaired by a city or town or other governmental entity or authority, regardless of whether any recorded covenants, conditions and restrictions affecting such private ways, bridges, or common amenities have expired.

b. Maintenance process if prior recorded instrument exists. The maintenance process with respect to any private way, bridge or common amenity shall be as stated in any prior recorded instrument relating to such private way, bridge or common amenity notwithstanding the fact that any conditions or restrictions imposed by said prior recorded instrument have expired by the language of the prior recorded instrument or by operation of law, and votes to amend such maintenance process shall be as stated in the prior recorded instrument. If there is no provision in such prior recorded instrument establishing the maintenance process for such private way, bridge or common amenity, or if there is no procedure in such prior recorded instrument to amend such maintenance process, the maintenance process for such

private way, bridge or common amenity may be established, and any amendments thereto may be adopted, by majority vote of proprietors and rightful users having the lawful right to use such private way, bridge or common amenity at a meeting duly called and held pursuant to the terms of the prior recorded instrument or, if such prior recorded instrument does not establish a procedure for calling such a meeting, then by majority vote at a meeting called and held pursuant to section 12A of this chapter.

c. Maintenance process if prior recorded instrument does not exist. If there is no prior recorded instrument with respect to a private way, bridge or common amenity, the maintenance process for such private way, bridge or common amenity may be established by majority vote at a meeting duly called and held pursuant to section 12A of this chapter.

d. Association of proprietors and rightful users established by prior recorded instrument. Any association of proprietors and rightful users created by a prior recorded instrument to implement the maintenance process established by such prior recorded instrument shall be governed by the provisions of that prior recorded instrument.

e. Association of proprietors and rightful users if not established by prior recorded instrument. Any maintenance process established at a meeting of proprietors and rightful users pursuant to subsection b or c, above, may include the creation of an association of proprietors and rightful users. Once such an association has been created, all proprietors and rightful users shall automatically become association members. Such association shall establish and follow a formal process, described below, to determine by-laws and to otherwise implement the maintenance process. No proprietor or rightful user shall be required to pay any membership

fee as a requirement to belonging to such an association. Maintenance and repair fees as determined by such association shall not be deemed to be membership fees.

Any association created pursuant to this chapter shall have a board of directors consisting of not less than three members, and shall serve a term as determined by a meeting of proprietors and rightful users duly called and held as set forth in subsection b or c above. The directors shall be proprietors or rightful users, and shall be elected by majority vote of the proprietors and rightful users attending, whether personally appearing or by written and signed instruction or proxy, a meeting called for that purpose. The directors shall hold a general meeting at least once per year, wherein proprietors and rightful users belonging to the association may be heard. The directors shall reach decisions regarding the management and implementation of the maintenance process and matters within the other powers of the directors through a majority vote. Directors may call additional meetings as they deem necessary or at the request of three or more proprietors and rightful users. Notice of all meetings shall be mailed by first class mail, postage prepaid, or otherwise delivered to all reasonably known proprietors and rightful users at least fourteen days before the meeting. If the directors fail or refuse to call a meeting when required or when petitioned to do so by three or more proprietors and rightful users, proprietors and rightful users may convene such a meeting. Once an association has been created, any meeting of the proprietors and rightful users shall be governed by the by-laws and rules established by the association. No duly called meeting of the proprietors and rightful users shall be deemed invalid if reasonable efforts were made to notify all proprietors and rightful users who were reasonably known at the time the meeting notices were mailed or delivered.

An association established pursuant to this chapter shall have the power to do anything reasonably necessary to manage and implement the maintenance process. In addition to

144 seeking court enforcement, the association may adopt reasonable rules and procedures to
145 encourage compliance and deter violations, including the imposition of fines, penalties, late fees,
146 and, if and to the extent authorized by the association, the withdrawal of privileges to use private
147 ways, bridges and common amenities. The association shall have the power to make substantial
148 alterations, improvements, and additions to the common property only if such alteration,
149 improvement or addition has been approved by a vote of not less than seventy-five percent of
150 proprietors and rightful users at a meeting called for that purpose. Funds may be raised by
151 levying assessments against individually owned property, and by charging fees for services or, if
152 and to the extent authorized by the association, for the use of the private ways, bridges, and
153 common amenities by proprietors and rightful users. Such fees must be reasonably related to the
154 costs of maintenance and repair of the private ways, bridges and common amenities. An
155 association shall have the power to sue and be sued. Associations shall have the duty to act
156 fairly and equitably towards all its members. Actions to collect maintenance and other fees may
157 be taken in the Superior Court in the county or the District Court in the district where the
158 property subject to the servitude lies.

159 The name and mailing address of the association which has been formed
160 pursuant to this chapter shall be stated in a document that shall be duly recorded. If a trust or
161 unincorporated association is created, such recorded document shall also set forth the names of
162 the trustees or managing board. Changes in the trustees or members of the managing board, as
163 the case may be, or changes in the mailing address of the association subsequent to the recording
164 of such document, shall be stated in a certificate signed and acknowledged by at least one trustee
165 or member of the managing board then appearing of record, or by a vote of the proprietors and
166 rightful users, and signed and acknowledged by one of them, and such certificate or vote shall be

duly recorded. Persons may rely in good faith upon any such recorded document or the most recently recorded certificate or vote as to the names of the trustees or members of the managing board and the address of the association. Notices sent in writing to the address listed in the recorded document or the most recently recorded certificate or vote, if relied upon in good faith, shall be deemed sufficiently given; provided, however, that the person or entity sending the notice has complied with other requirements, if any, of sections 12A to 14 of this chapter.

f. Assessments; lien. Any association of proprietors and rightful users, whether created by a prior recorded instrument or pursuant to subsection e, shall have a lien on the benefited land and the improvements thereon owned by each proprietor and rightful user for any assessment levied against such land and improvements pursuant to the provisions governing the maintenance process managed and implemented by the association, such lien to exist from the time the assessment becomes due. If any expense is incurred by the association as a result of the proprietor's or rightful user's failure to abide by the requirements imposed with respect to such maintenance process, the association may assess that expense exclusively against the proprietor or rightful user and such assessment shall constitute a lien against the benefited land and the improvements thereon owned by such proprietor or rightful user from the time the assessment is due, and such assessment shall be enforceable under this subsection f. The association may also assess any fees, attorneys' fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest charged pursuant to the provisions of the applicable maintenance process against the proprietor or rightful user and such assessment shall constitute a lien against the benefited land and the improvements thereon owned by such proprietor or rightful user from the time the assessment is due, and shall be enforceable under this subsection f. The proprietor or rightful user shall be personally liable for all sums assessed by the association pursuant to the

190 provision governing the maintenance process managed and implemented by the association,
191 including late charges, fines, penalties, and interest assessed by the association and all costs of
192 collection including attorneys' fees, costs, and charges.

193 When any portion of a proprietor's or rightful user's share of the charges, fees
194 and expenses assessed against the benefited land and the improvements thereon owned by such
195 proprietor or rightful user has been delinquent for at least sixty days, the association shall send a
196 notice stating the amount of the delinquency to the proprietor or rightful user by certified and
197 first class mail. A lien under this subsection f shall be enforced in the manner provided in
198 sections five and five A of chapter two hundred and fifty-four. Neither this subsection f nor
199 anything contained in sections five or five A of chapter two hundred and fifty-four shall be
200 deemed to prohibit actions to recover sums for which this subsection creates a lien or to prohibit
201 an association from taking a deed in lieu of enforcement of the lien created by this subsection.
202 Nothing herein shall be construed to prevent an association of proprietors and rightful users from
203 adopting or amending the procedures for managing and implementing the maintenance process
204 whether pursuant to the provisions of a prior recorded instrument or in accordance with
205 provisions of this section to provide additional protections, remedies, or rights for said
206 association in connection with the creation and enforcement of the liens referenced above in this
207 subsection.

208 The creation and enforcement of any lien created by a prior recorded instrument
209 shall be enforceable in accordance with, and governed by, the provisions of this subsection.

210 A statement from the association of proprietors and rightful users setting forth
211 the amount of unpaid assessments and any other sums which have been assessed against the

benefited land and the improvements thereon owned by a proprietor or rightful user shall operate to discharge the land and improvements thereon from any lien for other sums then unpaid when recorded; provided, however, that any statement or document issuing from an unincorporated association of proprietors and rightful users may be recorded and if so recorded shall indicate and specify therein the book and page, or document number if registered land, within such registry of the instrument from which the signatory or signatories of the statement obtained authority to sign on behalf of the unincorporated association. The statement shall be furnished within ten business days after receipt of a written request, upon payment of a reasonable fee, and shall be binding on the association and every proprietor and rightful user; provided, however, that no fee shall be required of any mortgagee, in connection with a foreclosure of a mortgage, who has given the association notice of its intention to foreclose a mortgage upon the benefited land and the improvements thereon owned by a proprietor or rightful user.

SECTION 2. Chapter 254 of the General Laws shall be amended by striking out section 5 and inserting in place thereof the following section:

Section 5. A lien upon land for the erection, alteration, repair or removal of a building or other structure or other improvement of real property or for professional services relating thereto or a lien established under section seventy-six of chapter sixty-three, section 14 of chapter eighty-four, or section 6 of chapter 183A shall be enforced by a civil action brought in the superior court for the county where such land lies or in the district court in the judicial district where such land lies. The plaintiff shall bring his action in his own behalf and in behalf of all other persons in interest who shall become parties. An attested copy of the complaint, which shall contain a brief description of the property sufficient to identify it, and a statement of the amount due, shall be filed in the registry of deeds and recorded as provided in section nine within

235 thirty days of the commencement of the action, or such lien shall be dissolved. All other parties
236 in interest may appear and have their rights determined in such action, and at any time before
237 entry of final judgment, upon the suggestion of any party in interest that any other person is or
238 may be interested in the action, or of its own motion, the court may summon such person to
239 appear in such cause on or before a day certain or be forever barred from any rights thereunder.
240 The court may in its discretion provide for notice to absent parties in interest. The terms "party in
241 interest" and "person in interest", as used in this chapter, shall include mortgagees and attaching
242 creditors.

243 SECTION 3. Section 5A of said chapter 254 shall be further amended by
244 striking the first sentence and inserting in place thereof the following:

245 When the amount of a lien under section 14 of chapter 84, section six of chapter 183A, or
246 section 29 of chapter 183B has been established by a court, the court shall enter an order
247 authorizing the sale of the real estate to satisfy such lien;" and by inserting, after the first
248 paragraph, the following new paragraph:

249 For a lien under section 14 of chapter 84, such form shall be printed in substantially the
250 following form:

251 SALE OF REAL ESTATE

252 UNDER GLM 84:14

253 By virtue of a Judgment and Order of the ____ Court (docket no. ____) in favor of ____
254 against ____ establishing a lien pursuant to GLM 84:14 on the real estate known as [Property
255 Address] for the purpose of satisfying such lien, the real estate will be sold at Public Auction at

256 ____ o'clock . M. on the ____ day of ____ A.D. (insert year) at ____ . The premises to be sold are
257 more particularly described as follows:

258 Description: (Describe premises exactly as in the deed, including all references to title,
259 restrictions, encumbrances, etc.)

260 Terms of sale: (State the amount, if any, to be paid in cash by the purchaser at the time
261 and place of the sale, and the time or times for payment of the balance or the whole as the case
262 may be.)

263 Other terms to be announced at the sale.

264 (Signed)____ ____ Lienholder

265 ____ (insert year)

266 SECTION 4. This act shall take effect upon its passage.