

**SENATE . . . . . No. 2066**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Julian Cyr*

*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 ways, bridges and common amenities in municipalities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>1/30/2019</i>

**SENATE . . . . . No. 2066**

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By Mr. Cyr, a petition (accompanied by bill, Senate, No. 2066) of Julian Cyr and Adam G. Hinds for legislation relative to the maintenance of private ways, bridges and common amenities in municipalities. Transportation.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1910 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to the maintenance of private ways, bridges and common 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 sections  
2 12, 13 and 14 and inserting in place thereof the following eight sections:

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

5           “Benefited land” shall mean the land owned by a proprietor or rightful user which land  
6 has an appurtenant right to use a private way, bridge or common amenity whether by easement,  
7 grant, implication or otherwise.

8           “Bridge” shall mean a private bridge, whether paved or unpaved, that is not maintained,  
9 repaired or replaced by a city or town or other governmental entity or authority.

10           “Common amenity” shall mean a private park, building, recreational facility, beach or the  
11 like, privately owned utility line or system and appurtenances to such utility line or system, and  
12 any and all appurtenances thereto or appurtenances to a private way or bridge including but not  
13 limited to roadway rights of way, drainage, abutments, slopes, ramps, approaches, and landscape  
14 and hardscape improvements, and in each case that is not maintained, repaired or replaced by a  
15 city or town or other governmental entity or authority.

16           “Common association” shall mean a trust, corporation, limited liability company, or  
17 unincorporated association established for the purpose of maintaining, repairing and replacing a  
18 private way, bridge or common amenity, the beneficiaries, shareholders, or members of which  
19 are all of the proprietors and rightful users owning benefited land that has an appurtenant right to  
20 use such private way, bridge or common amenity whether by easement, grant, implication or  
21 otherwise.

22           “Common association board” shall mean a governing or managing board of a common  
23 association, as applicable, which board shall be created pursuant to and in accordance with  
24 section 13B of this chapter.

25           “Common association members” shall mean the beneficiaries, shareholders, or members,  
26 as applicable, of a common association.

27           “Maintenance process” shall mean the process for any one or more of the following (i)  
28 maintenance, repair and replacement of private ways, bridges and common amenities, (ii)  
29 contribution and collection of funds for administration and for such maintenance, repair and

30 replacement from proprietors and rightful users owning benefited land that has the appurtenant  
31 right to use such private ways, bridges and common amenities whether by easement, grant,  
32 implication or otherwise, (iii) making assessments on account thereof and increasing or  
33 decreasing such assessments from time to time, (iv) establishing liens for unpaid assessments,  
34 and (v) enforcing the obligation of proprietors and rightful users to pay such assessments  
35 whether through foreclosure of such liens or otherwise.

36 “Prior recorded instrument” shall mean an instrument that was recorded at the time of the  
37 establishment of a private way, bridge or common amenity or was recorded subsequent to the  
38 establishment of such private way, bridge or common amenity with the consent of all proprietors  
39 or rightful users owning benefited land that has the appurtenant right to use such private way,  
40 bridge or common amenity whether by easement, grant, implication or otherwise, which  
41 instrument in either such case was recorded prior to January 1, 2018.

42 “Private way” shall mean a private street, road or other way, whether paved or unpaved,  
43 which is not maintained, repaired or replaced by a city or town or other governmental entity or  
44 authority.

45 “Proprietor” shall mean the fee owner of land abutting a private way, bridge or common  
46 amenity which land has an appurtenant right to use such private way, bridge or common amenity  
47 whether by easement, grant, implication or otherwise.

48 “Recorded” shall refer to an instrument or document recorded with the registry of deeds  
49 in accordance with chapter 183 or registered with the registry district of the land court in  
50 accordance with chapter 185.

51 “Rightful user” shall mean any fee owner, other than a proprietor, of land which has an  
52 appurtenant right to use a private way, bridge or common amenity whether by easement, grant,  
53 implication or otherwise.

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

57 Section 12A. Equitable servitude created for maintenance, repair and replacement of  
58 private ways, bridges and common amenities; duration of obligation. Notwithstanding any  
59 general law or special law to the contrary, an obligation that provides for proprietors or rightful  
60 users to be responsible for, or to participate financially or otherwise in, the maintenance, repair  
61 and replacement of private ways, bridges, or common amenities, whether imposed as provided in  
62 sections 12B through 14A, or by an order of a court of competent jurisdiction applying equitable  
63 principles, shall be deemed to have created an equitable servitude, binding on all benefitted land  
64 owned by each proprietor or rightful user, and not a condition or restriction. The establishment  
65 of appurtenant rights to use a private way, bridge, or common amenity requiring maintenance,  
66 repair or replacement shall be deemed to create a servitude for the maintenance, repair and  
67 replacement of the private way, bridge, or common amenity. Such servitude shall continue as  
68 long as the need for maintenance, repair or replacement continues and as long as the private way,  
69 bridge, or common amenity remains private and is not maintained, repaired or replaced by a city  
70 or town or other governmental entity or authority.

71 Notwithstanding any general law or special law or any provision of any recorded  
72 instrument to the contrary, the obligation of any proprietors or rightful users of any private ways,

73 bridges or common amenities to maintain, repair or replace or contribute to the maintenance,  
74 repair or replacement of such private ways, bridges, or common amenities shall continue as long  
75 as the appurtenant right to use such private ways, bridges or common amenities continues and as  
76 long as the private ways, bridges or common amenities remain private and are not maintained,  
77 repaired or replaced by a city or town or other governmental entity or authority, regardless of  
78 whether any recorded covenants, conditions and restrictions affecting such private ways, bridges,  
79 or common amenities have expired. Such obligations of each proprietor and rightful user shall  
80 continue regardless of whether such proprietor or rightful user exercises its right to use such  
81 private way, bridge or common amenity, and shall continue notwithstanding any unilateral  
82 release by such proprietor or rightful user of the right to use such private way, bridge or common  
83 amenity. Notwithstanding the prior sentence, a proprietor or rightful user may disclaim an  
84 appurtenant right to use a private way, bridge or common amenity which is granted to such  
85 proprietor or rightful user subsequent to the date such proprietor or rightful user became the  
86 owner of the benefitted land to which such right is appurtenant, and, upon the recording of such  
87 disclaimer, such proprietor or rightful user and any successor owner of such benefitted land shall  
88 have no further right to use the private way, bridge or common amenity that is the subject of the  
89 disclaimer and shall have no further obligations with respect to the maintenance, repair and  
90 replacement of such private way, bridge or common amenity or with respect to the payment of  
91 the costs of such maintenance, repair and replacement. However, in no event may a proprietor or  
92 rightful user disclaim any right to use a private way, bridge or common amenity that was created  
93 as appurtenant to the benefitted land of such proprietor or rightful user, whether by express grant,  
94 by implication or otherwise, prior to the date such proprietor or rightful user became the owner  
95 of such benefitted land.

96           Section 12B. Maintenance process or common association established by prior recorded  
97 instrument. The maintenance process with respect to any private way, bridge or common  
98 amenity as stated in any prior recorded instrument relating to such private way, bridge or  
99 common amenity shall remain in effect notwithstanding the fact that any covenants, conditions  
100 or restrictions imposed by said prior recorded instrument have expired by the language of the  
101 prior recorded instrument or by operation of law, and votes to amend such maintenance process  
102 shall be as stated in the prior recorded instrument. If there is no provision in such prior recorded  
103 instrument establishing the maintenance process for such private way, bridge or common  
104 amenity, or if there is no procedure in such prior recorded instrument to amend such maintenance  
105 process, the maintenance process for such private way, bridge or common amenity may be  
106 established, or any amendments thereto may be adopted, by majority vote of proprietors and  
107 rightful users owning benefited land which has the appurtenant right to use such private way,  
108 bridge or common amenity at a meeting duly called and held pursuant to the terms of the prior  
109 recorded instrument or, if such prior recorded instrument does not establish a procedure for  
110 calling such a meeting, then by majority vote of such proprietors and rightful users attending,  
111 whether personally appearing or by written and signed instruction or proxy, a meeting called and  
112 held for that purpose pursuant to section 13 of this chapter.

113           Any common association created by a prior recorded instrument to implement the  
114 maintenance process established by such prior recorded instrument shall be governed by the  
115 provisions of that prior recorded instrument. If there is no common association created by a prior  
116 recorded instrument to implement the maintenance process established by such prior recorded  
117 instrument, or if there is no procedure in such prior recorded instrument to amend the structure of  
118 or provisions governing such common association, the common association may be created, or

119 any amendments to the structure of or provisions governing such common association may be  
120 adopted, by majority vote of proprietors and rightful users owning benefited land which has the  
121 appurtenant right to use the applicable private way, bridge or common amenity at a meeting duly  
122 called and held pursuant to the terms of the prior recorded instrument or, if such prior recorded  
123 instrument does not establish a procedure for calling such a meeting, then by majority vote of  
124 such proprietors and rightful users attending, whether personally appearing or by written and  
125 signed instruction or proxy, a meeting called and held for that purpose pursuant to section 13 of  
126 this chapter. The creation of any common association pursuant to this section, or any  
127 amendments adopted pursuant to this section with respect to a common association created by a  
128 prior recorded instrument, shall be governed by the provisions of section 13B of this chapter.

129           Section 13. Meeting of proprietors and rightful users to establish maintenance process or  
130 common association. If four or more persons are the proprietors or rightful users of a private  
131 way, bridge, or common amenity that is not governed or managed by a prior recorded instrument  
132 or instrument previously adopted pursuant to section 13A of this chapter, then any three or more  
133 of them may call a meeting for the purpose of establishing a maintenance process for such  
134 private way, bridge or common amenity, or for the purpose of establishing a common  
135 association, or both, by mailing notice of the date, time and place of the meeting by certified and  
136 first class mail, postage prepaid, to each proprietor and rightful user of the private way, bridge or  
137 common amenity that is the subject of the proposed maintenance process or common association  
138 at least 14 days before the time appointed for the meeting and addressed to those persons and  
139 addresses appearing in the records of the assessor for the city or town in which the benefited land  
140 owned by the proprietors and rightful users is located, and by publishing a copy of said notice at



141 least once, not less than 14 days before the day of the meeting, in a newspaper with general  
142 circulation in the city or town where such benefited land lies.

143         The maintenance process, or the common association, its initial common association  
144 board, and its terms and provisions as set forth in section 13B of this chapter, shall be created  
145 upon a majority vote of the proprietors and rightful users attending, whether personally  
146 appearing or by written and signed instruction or proxy, such meeting. Once the maintenance  
147 process has been established, then all proprietors and rightful users, including those not in  
148 attendance at the meeting, shall automatically become subject to and have the benefit of the  
149 maintenance process. Once the common association has been created, then all proprietors and  
150 rightful users, including those not in attendance at the meeting, shall automatically become  
151 common association members and subject to the terms and provisions of the common  
152 association. Any maintenance process or common association established or amended at a  
153 meeting called and held pursuant to this Section 13 shall be required to be established or  
154 amended in a manner that is fair and equitable towards all proprietors and rightful users subject  
155 to such maintenance process or common association, as applicable.

156         Section 13A. Maintenance process or common association established by meeting of  
157 proprietors and rightful users. If there is no maintenance process or procedures to amend a  
158 maintenance process established by a prior recorded instrument or instrument previously adopted  
159 pursuant to this section with respect to a private way, bridge or common amenity, then the  
160 maintenance process for such private way, bridge or common amenity, and the procedures for  
161 adopting amendments to the maintenance process, may be established by majority vote of the  
162 proprietors and rightful users attending, whether personally appearing or by written and signed  
163 instruction or proxy, a meeting called and held for that purpose pursuant to section 13 of this

164 chapter. The existence of a maintenance process that has been established pursuant to section  
165 12B of this chapter or this section 13A shall be set forth in a document that shall be duly  
166 recorded, which document shall certify that the maintenance process has been established in  
167 accordance with the provisions of said section 12B or this section 13A, as applicable, shall  
168 certify that the notice provisions of section 13 have been complied with, where applicable,  
169 including a statement of the place and date of publication of notice of any meeting held pursuant  
170 to said section 13, and shall be signed and acknowledged by at least two of the proprietors and  
171 rightful users owning benefitted land. The document recorded pursuant to this section shall also  
172 set forth the names of a list of the owners of all benefitted land as of the date of recording,  
173 including a reference to the deed, certificate of title or other source of the title of each such  
174 owner to the benefitted land owned by such owner. Such recorded document shall also include  
175 a description of the private ways, bridges or common amenities that are the subject of the  
176 maintenance process by metes and bounds description, or by reference to a plan recorded  
177 previously or together with such recorded document, or by reference to the prior recorded  
178 instrument or instruments establishing such private ways, bridges or common amenities, or by  
179 any other means which allows the nature, location and extent of the private ways, bridges or  
180 common amenities to be reasonably determined from the recorded document setting forth the  
181 existence of the maintenance process. The recorded document shall include such additional  
182 information regarding the maintenance process as may be determined to be appropriate by the  
183 proprietors and rightful users establishing the maintenance process. Changes in the maintenance  
184 process subsequent to the recording of such document shall be stated in a certificate evidencing a  
185 vote of the proprietors and rightful users adopting such change, which certificate shall be signed  
186 and acknowledged by at least one of the proprietors or rightful users and shall be duly recorded.

187 Notwithstanding the foregoing provisions of this paragraph, the existence of a maintenance  
188 process that has been established pursuant to section 12B of this chapter or this section 13A may  
189 be set forth in a document executed and recorded pursuant to section 13B of this chapter  
190 evidencing the formation of a common association that will oversee such maintenance process,  
191 and a separate document executed and recorded pursuant to this paragraph shall not be required.

192         If there is no prior recorded instrument or instrument previously adopted pursuant to this  
193 section establishing a common association to implement a maintenance process established  
194 pursuant to this section, then such common association may be established by majority vote of  
195 the proprietors and rightful users attending, whether personally appearing or by written and  
196 signed instruction or proxy, a meeting called and held for that purpose pursuant to section 13 of  
197 this chapter. A single such meeting may be called and held for the purpose of establishing both a  
198 maintenance process and a common association; provided, however, that it shall be permissible  
199 to establish a maintenance process without establishing also a common association. The creation  
200 of any common association pursuant to this section shall be governed by the provisions of  
201 section 13B of this chapter.

202         Section 13B. Provisions governing common association. The provisions of this section  
203 shall govern any common association not in existence pursuant to a prior recorded instrument but  
204 instead created pursuant to section 12B or section 13A of this chapter. In addition, any  
205 amendments adopted pursuant to section 12B of this chapter with respect to a common  
206 association in existence pursuant to a prior recorded instrument shall comply with the provisions  
207 of this section. Once a common association governed by the provisions of this section has been  
208 created, all proprietors and rightful users shall automatically become common association  
209 members. No proprietor or rightful user shall be required to pay any membership fee as a

210 requirement to belonging to such common association. Administration and maintenance fees  
211 and fees for repair and replacement as determined by such common association shall not be  
212 deemed to be membership fees. Any common association governed by the provisions of this  
213 section shall be required to have a common association board, which common association board  
214 shall have not less than three members. The members of the common association board shall  
215 each serve a term as determined by majority vote of the proprietors and rightful users attending,  
216 whether personally appearing or by written and signed instruction or proxy, the meeting called  
217 and held for the purpose of establishing the common association or amending the structure of or  
218 provisions governing such common association pursuant to section 13 of this chapter. The  
219 members of the common association board shall be elected by majority vote of the proprietors  
220 and rightful users attending, whether personally appearing or by written and signed instruction or  
221 proxy, a meeting called and held for that purpose. The common association board shall hold a  
222 general meeting at least once per year, wherein proprietors and rightful users belonging to the  
223 common association may be heard. The common association board shall reach decisions  
224 regarding the management and implementation of the maintenance process and matters within  
225 the other powers of the common association board through a majority vote. The common  
226 association board may call additional meetings as deemed necessary by the common association  
227 board or at the request of three or more proprietors and rightful users. Notice of all meetings  
228 shall be mailed by first class mail, postage prepaid, or otherwise delivered to all known  
229 proprietors and rightful users at least fourteen days before the meeting. If the common  
230 association board fails or refuses to call a meeting when required or when petitioned to do so by  
231 three or more proprietors and rightful users, the proprietors and rightful users may convene such  
232 a meeting by giving notice of such meeting mailed by first class mail, postage prepaid, or

233 otherwise delivered to all known proprietors and rightful users at least fourteen days before the  
234 meeting. Once a common association has been created, any meeting of the common association  
235 board or of the proprietors and rightful users shall be governed by the by-laws and rules  
236 established by the common association. No duly called meeting of the proprietors and rightful  
237 users shall be deemed invalid if reasonable efforts were made to notify all proprietors and  
238 rightful users who were known at the time the meeting notices were mailed or delivered.

239           A common association shall have the power to do anything reasonably necessary to  
240 manage and implement the maintenance process. In addition to seeking court enforcement, the  
241 common association may adopt reasonable rules and procedures to encourage compliance and  
242 deter violations, including the imposition of fines, penalties, late fees, and, if and to the extent  
243 authorized by the documents creating and governing the common association, the withdrawal of  
244 privileges to use private ways, bridges and common amenities. The common association shall  
245 have the power to make substantial alterations, improvements, and additions to private ways,  
246 bridges and common amenities only if such alteration, improvement or addition has been  
247 approved by a vote of not less than seventy-five percent of proprietors and rightful users  
248 attending, whether personally appearing or by written and signed instruction or proxy, a meeting  
249 called for that purpose. The documents governing the common association may define the  
250 alterations, improvements or additions that shall be deemed substantial for the purposes of the  
251 preceding sentence, and any such definition shall be binding on the association members. Funds  
252 may be raised by levying assessments against the benefited land owned by the proprietors and  
253 rightful users, and by charging fees for services or, if and to the extent authorized by the  
254 documents creating and governing the common association, for the use of the private ways,  
255 bridges, and common amenities by proprietors and rightful users. Such fees must be reasonably

256 related to the costs of maintenance, repair and replacement of the private ways, bridges and  
257 common amenities and related administration costs. A common association shall have the power  
258 to sue and be sued. Common associations shall have the duty to act fairly and equitably towards  
259 all the common association members. Actions to collect maintenance and other fees may be  
260 taken in the superior court in the county or the district court in the district where the property  
261 subject to the servitude lies.

262         The name and mailing address of the common association which has been formed  
263 pursuant to section 12B or section 13A of this chapter shall be stated in a document that shall be  
264 duly recorded, which document shall certify that the common association has been formed in  
265 accordance with the provisions of said section 12B or said section 13A, as applicable, shall  
266 certify that the notice provisions of section 13 have been complied with, where applicable,  
267 including a statement of the place and date of publication of notice of any meeting held pursuant  
268 to said section 13, and shall be signed and acknowledged by at least two of the proprietors and  
269 rightful users who are members of such common association. If the common association has  
270 been formed pursuant to a prior recorded instrument referencing such common association or for  
271 the purpose of overseeing the maintenance process set forth in a prior recorded instrument, the  
272 document recorded pursuant to this section shall also include the recording information for that  
273 prior recorded instrument. The document recorded pursuant to this section shall also set forth the  
274 names of the members of the common association board and a list of the owners of all benefitted  
275 land as of the date of recording, including a reference to the deed, certificate of title or other  
276 source of the title of each such owner to the benefitted land owned by such owner. Such  
277 recorded document shall also include a description of the private ways, bridges or common  
278 amenities overseen by the common association by metes and bounds description, or by reference

279 to a plan recorded previously or together with the common association document, or by reference  
280 to the prior recorded instrument or instruments establishing such private ways, bridges or  
281 common amenities, or by any other means which allows the nature, location and extent of the  
282 private ways, bridges or common amenities to be reasonably determined from the common  
283 association document. The recorded document shall set forth the powers of the common  
284 association and the procedures for governance of the association, or shall reference the recording  
285 information for any separately recorded bylaws or other governing documentation for the  
286 common association setting forth such powers and procedures. The recorded common  
287 association document shall be indexed to the name of the association as well as in the chain of  
288 title for each owner of benefitted land or, in the event of registered land, endorsed on the  
289 memorandum of encumbrances for the certificate of title for each owner of benefitted land, as  
290 applicable. Subsequent amendments, changes in the association board, and other documents  
291 affecting the common association shall be accepted for recording by the registry of deeds,  
292 assessed a single document recording fee and entered in the grantor index under the name of the  
293 association; or, in the event of registered land, the land registration office shall either (a) endorse  
294 such subsequent document on the memorandum of encumbrances for the certificate of title for  
295 each owner of benefitted land, or (b) issue a master certificate of title for the common association  
296 and shall endorse on its memorandum of encumbrances the common association document and  
297 any concurrently or subsequently filed amendments, changes in the association board, and other  
298 documents affecting the common association, and in either event the land registration office shall  
299 assess only a single document recording fee for the subsequent association document and shall  
300 not assess a recording fee multiplied by the number of certificates of title for the benefitted land.

301 Changes in the members of the common association board, or changes in the mailing  
302 address of the common association subsequent to the recording of such document, shall be stated  
303 in a certificate signed and acknowledged by at least one member of the common association  
304 board then appearing of record, or by a vote of the proprietors and rightful users and signed and  
305 acknowledged by at least one of the proprietors or rightful users, and such certificate or vote  
306 shall be duly recorded. Persons may rely in good faith upon any such recorded document or the  
307 most recently recorded certificate or vote as to the names of the members of the common  
308 association board and the address of the common association. Notices sent in writing to the  
309 address listed in the recorded document or the most recently recorded certificate or vote, if relied  
310 upon in good faith, shall be deemed sufficiently given; provided, however, that the person or  
311 entity sending the notice has complied with the other requirements of sections 12A through 14A  
312 of this chapter, as applicable.

313 Section 14. Assessments; lien. Any common association that is created pursuant to  
314 sections 12B or 13A, and any common association created by a prior recorded instrument that  
315 elects to be subject to this section in the manner hereinafter provided , shall have a lien on the  
316 benefited land and the improvements thereon owned by each proprietor and rightful user for any  
317 assessment levied against such land and improvements pursuant to the provisions governing the  
318 maintenance process managed and implemented by the common association, such lien to exist  
319 from the time the assessment becomes due, and shall be enforceable under this section. A  
320 common association created by prior recorded instrument may elect to be subject to this section  
321 (a) by majority vote of the proprietors and rightful users attending a meeting called and held for  
322 that purpose in accordance with the governing procedures of such common association, notice of  
323 which meeting shall specifically indicate that a vote will be held at the meeting to determine



324 whether the common association will adopt this section, and (b) by causing an instrument  
325 evidencing such election to be signed and acknowledged by at least two of the proprietors and  
326 rightful users who are members of such common association, which instrument shall include a  
327 certification that the election was made at a meeting called and held in accordance with the  
328 provisions of this section 14, shall include the name and mailing address of the common  
329 association, and shall also set forth the names of the members of the common association board  
330 and a list of the owners of all benefitted land as of the date of recording, including a reference to  
331 the deed, certificate of title or other source of the title of each such owner to the benefitted land  
332 owned by such owner, and by causing such instrument to be duly recorded and indexed to the  
333 name of the association as well as in the chain of title for each owner of benefitted land or, in the  
334 event of registered land, endorsed on the memorandum of encumbrances for the certificate of  
335 title for each owner of benefitted land, as applicable. In no event shall any common association  
336 have a lien pursuant to this section for any assessment that becomes due prior to the creation of  
337 such common association pursuant to sections 12B or 13A or, in the case of a common  
338 association created by a prior recorded instrument, prior to the recording of an instrument of  
339 election pursuant to the preceding sentence.

340         If any expense is incurred by the common association as a result of the proprietor's or  
341 rightful user's failure to abide by the requirements imposed with respect to such maintenance  
342 process, the common association may assess that expense exclusively against the proprietor or  
343 rightful user and such assessment shall constitute a lien on the benefitted land and the  
344 improvements thereon owned by such proprietor or rightful user from the time the assessment is  
345 due, and such assessment shall be enforceable under this section. The common association may  
346 also assess any fees, attorneys' fees, charges, late charges, fines, costs of collection and

347 enforcement, court costs, and interest charged pursuant to the provisions of the applicable  
348 maintenance process against the proprietor or rightful user and such assessment shall constitute a  
349 lien on the benefited land and the improvements thereon owned by such proprietor or rightful  
350 user from the time the assessment is due, and shall be enforceable under this section. The  
351 proprietor or rightful user shall be personally liable for all sums assessed by the common  
352 association pursuant to the provisions governing the maintenance process managed and  
353 implemented by the common association, including late charges, fines, penalties, and interest  
354 assessed by the common association and all costs of collection including attorneys' fees, costs,  
355 and charges.

356         When any portion of a proprietor's or rightful user's share of the charges, fees and  
357 expenses assessed against the benefited land and the improvements thereon owned by such  
358 proprietor or rightful user has been delinquent for at least sixty days, the common association  
359 shall send a notice stating the amount of the delinquency to the proprietor or rightful user by  
360 certified and first class mail. A lien under this section shall be enforced in the manner provided  
361 in sections five and five A of chapter two hundred and fifty-four. Neither this section nor  
362 anything contained in sections five or five A of chapter two hundred and fifty-four shall be  
363 deemed to prohibit actions to recover sums for which this section creates a lien or to prohibit a  
364 common association from taking a deed in lieu of enforcement of the lien created by this  
365 section. Nothing herein shall be construed to prevent a common association from adopting or  
366 amending the procedures for managing and implementing the maintenance process whether  
367 pursuant to the provisions of a prior recorded instrument or in accordance with the provisions of  
368 sections 12B or 13A of this chapter to provide additional protections, remedies, or rights for said

369 common association in connection with the creation and enforcement of the liens referenced  
370 above in this section.

371           The creation and enforcement of any lien created by a prior recorded instrument shall be  
372 enforceable in accordance with, and governed by, the provisions of this section, notwithstanding  
373 any provisions to the contrary contained within said prior recorded instrument. Notwithstanding  
374 the aforesaid, nothing contained in this section shall be construed to prevent or prohibit any  
375 common association, whether created pursuant to sections 12B or 13A or created by a prior  
376 recorded instrument, from exercising other rights of enforcement available at common law, by  
377 statute or otherwise.

378           Section 14A. Statement of amounts due. A statement executed and acknowledged by  
379 one or more members of the common association board stating that all assessments and other  
380 sums which have been assessed against the benefited land identified in the statement and the  
381 improvements thereon have been paid through the date set forth in such statement shall, when  
382 recorded, operate to discharge the land and improvements thereon from any lien for any  
383 assessments or other sums owed prior to the date set forth in such statement. The statement shall  
384 be furnished within ten business days after receipt of a written request, upon payment of a  
385 reasonable fee, and shall be binding on the common association and every proprietor and rightful  
386 user; provided, however, that no fee shall be required of any mortgagee, in connection with a  
387 foreclosure of a mortgage, who has given the common association notice of its intention to  
388 foreclose a mortgage upon the benefited land and the improvements thereon owned by a  
389 proprietor or rightful user.

390 SECTION 2. Section 5 of Chapter 254 of the General Laws shall be amended by striking  
391 out the first sentence and inserting in place thereof the following:

392 A lien upon land for the erection, alteration, repair or removal of a building or other  
393 structure or other improvement of real property or for professional services relating thereto or a  
394 lien established under section seventy-six of chapter sixty-three, section 14 of chapter eighty-  
395 four, or section 6 of chapter 183A shall be enforced by a civil action brought in the superior  
396 court for the county where such land lies or in the district court in the judicial district where such  
397 land lies.

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

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

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

406 SALE OF REAL ESTATE

407 UNDER GLM 84:14

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

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

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

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

418 Other terms to be announced at the sale.

419 (Signed)\_\_\_ \_\_\_ Lienholder

420 \_\_\_(insert year)

421 SECTION 4. This act shall take effect January 1, 2021