SENATE DOCKET, NO. 977 FILED ON: 1/17/2013

# SENATE . . . . . No. 983

The Commonwealth of Massachusetts

PRESENTED BY:

***Daniel A. Wolf***

*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, beaches and amenities in municipalities..

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Daniel A. Wolf* | *Cape and Islands* |
| *Cleon H. Turner* | *1st Barnstable* |

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# SENATE . . . . . No. 983

By Mr. Wolf, a petition (accompanied by bill, Senate, No. 983) of Daniel A. Wolf and Cleon H. Turner for legislation relative to the maintenance of private roads, beaches and amenities in municipalities. Municipalities and Regional Government.

## The Commonwealth of Massachusetts

**In the Year Two Thousand Thirteen**

An Act relative to the maintenance of private roads, beaches 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:*

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

SECTION 1: Chapter 84 of the General Laws shall be amended in section 12 by deleting the words, “private way or bridge” in the first line and replacing them with the words, “private way, bridge or other common amenity”.

SECTION 2: Chapter 84 of the General Laws shall be amended in section 12 by inserting at the beginning of said section the following:

For the purposes of sections 12 through 14 of this chapter, the following terms shall have the following meanings:

“Common amenity” shall mean private parks, buildings, recreational facilities, beaches and the like intended for the use by property owners in a private subdivision or area;

“Proprietor” as used in this chapter shall mean the “owner” of land abutting a private road and who has the rght to use the private road to access his property;

“Rightful occupant” shall mean any person oher than a proprietor with a lawful right to use a private road, bridge or other private amenity by easement, grant or implication.

“Private Road” shall mean a way, whether paved or unpaved, intended primarily for the use of vehicles and shall shall include any and all appurtenances to such roads or ways, bridges

and common amenities including but not limited to roadway rights of way, drainage, abutments, slopes, ramps and approaches and which are not maintained by a city or town.

"Servitude or Equitable servitude" for the purposes of section 12 to 14 of this chapter is an obligation of a proprietor or rightful occupant, whether such obligation is actual or implied, to participate financially or otherwise in the maintenance of private roads, bridges or other common amenities in a private subdivision.

SECTION 3: Said chapter 84 shall be further amended by adding after section 12, the following new section:

Section 12A: Notwithstanding any general or special law to the contrary, an obligation imposed by a recorded document or otherwise for property owners or occupants to be responsible for or to contribute financially or otherwise to the maintenance of roads, bridges, beaches or other common amenities within a private subdivision shall be deemed to have created an equitable servitude and not a condition or restriction.

An equitable servitude is created when real property is conveyed intending to create a servitude, or if the requirements of a servitude by necessity are met. The creation of a private road, bridge, other structure, or common amenities such as parks and beaches requiring maintenance within a private development shall be deemed to create a servitude for the maintenance of the private road, bridge, structure, or common amenities. Such servitudes and servitudes by necessity shall continue as long as the need for maintenance continues or as long as the road, bridge, structure or amenity remains private.

SECTION 4: Chapter 84 shall be further amended by adding after section 12A, the following new section:

Section 12B: a. Notwithstanding any law or special law to the contrary, the obligation of any person or entity, whose property abuts any private road or roads and bridges, and who has the right to access private roads, bridges, related beaches or other common amenities, or whose property does not abut such private roads, bridges, beaches and other common amenities but who has the use of such private roads, bridges, beaches, or other common amenities by grant or implication, to maintain or contribute to the maintenance of such roads, bridges, beaches or other common amenities shall continue as long as the privilege, right to use or benefit continues and as long as the road or roads, bridges and common amenities remain private regardless of whether any recorded covenants, conditions and restrictions affecting such subdivision, roads, bridges, beaches or other common amenities have expired.

b. The process for contribution, collection and maintenance of private roads bridges and other common amenities shall be as stated in any recorded document, relating thereto notwithstanding the fact that any conditions or restrictions imposed by said document have expired by the language of the document or by operation of law unless such process is amended

by majority vote of owners and occupants having such rights and obligations. Votes to amend the provisions for collection of funds, increase or decrease in assessments and maintenance of roads, bridges, beaches and other common amenities shall be as stated in the recorded document.

If there is no provision in such document for increasing or decreasing amounts to be paid in such document or there was no such document previously recorded, the proprietors and rightful occupants may call a meeting pursuant pursuant to the tems of the recorded document as properly amended, or if no such document was previously recorded, then pursuant to sections 12, 13 and 14 of this chapter to determine those issues.

c. If no document has been recorded describing the process for determining such maintenance and contributions, proprietors and rightful occupants subject to a servitude shall have the power to create an association of property owners. Such an association may be created by using the provisions of sections 12, 13 and 14 of this chapter. Once an association has been created, all owners and rightful occupants subject to the servitude shall automatically become association members. The association shall establish and follow a formal process, described below, to determine by-laws, maintenance fees and other obligations. No proprietor or rightful occupant shall be required to pay any membership fee as a requirement to belonging to the association. Maintenance fees as determined by the asociation shall not be deemed to be membership fees.

The association shall have a board of directors consisting of three, five, or seven members. The directors shall be proprietors subject to a servitude, and shall be elected by majority vote of the proprietors and rightful occupants subject to the servitude. The directors shall serve a term to be determined by a meeting of proprietors and rightful occupants. The directors shall hold a general meeting at least once per year, wherein proprietors and rightful occupants belonging to the association may be heard. The directors shall reach decisions on by-laws of the association, maintenance, maintenance fees and other powers through a majority vote and such determinations shall be approved or disapproved by a majority of proprietors and rightful occupants at a meeting called for that purpose. Directors may call additional meetings as they deem necessary or at the request of three or more proprietors and rightful occupants. Notice of all meetings shall be mailed by first class mail, postage prepaid, or otherwise delivered to all reasonably known proprietors and rightful occupants 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 occupants, proprietors and rightful occupants may convene such a meeting pursuant to section 12 of this chapter. Once an association has been created, any meeting of the proprietors and rightful occupants shall be governed by the by-laws and rules established by the association. No duly called meeting of the proprietors and rightful occupants shall be deemed invalid if reasonable efforts were made to notify all proprietors and rightful occupants who were reasonably known at the time the meeting notices were mailed or delivered.

An association shall have the power to do anything reasonably necessary to manage the roadways, bridges or other common amenities and administer the servitudes. Such powers shall

include the power to raise funds necessary to carry out the functions of the association, and the power to enforce rules and regulations. In addition to seeking court enforcement, the association may adopt reasonable rules and procedures to encourage compliance and deter violations, including the imposition of fines, penalties, late fees, and the withdrawal of privileges to use common recreational and social facilities. The association shall have the power to make substantial alterations, improvements, and additions to the common property. Funds may be raised by levying assessments against the individually owned property, and by charging fees for services or for the use the roads and common amenities by rightful occupants. Such fees must be reasonably related to the costs of the operation and maintenance of the roads, bridges and other amenities. An association shall have the power to manage, acquire, and improve common property. An association shall have the power to sue and be sued. Associations shall have the duty to act fairly towards its members and allow all members to participate in decisions. Actions to collect maintenance and other fees may be taken in the District Court in the district where the property subject to the servitude lies.

SECTION 5. This act shall take effect upon its passage.