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Title 23: TRANSPORTATION

Chapter 305: CONSTRUCTION, MAINTENANCE AND REPAIR

Subchapter 1: PUBLIC WAYS

§3051. ROAD MACHINES USED AFTER AUGUST 10TH

(REPEALED)

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A83 (RP).

§3052. MATERIALS PLACED ON ROADSIDE; REMOVAL

If any municipality in the construction or repair of its highways places any stone, sod or other material upon land within the limit of any highway which the owner has cleared from stone and smoothed so that it is tillable land and so used, said municipality shall within 30 days remove the same from such land. Failing to do this, the owner of said land may remove such stone, sod or other material therefrom and be paid the same price per hour for such removal as is paid by said municipality for labor in the construction and repair of its roads.

§3053. CONTRACTS FOR CONSTRUCTION OF BRIDGES

(REPEALED)

SECTION HISTORY

1971, c. 593, §22 (AMD). 1981, c. 456, §A84 (RP).

§3054. PERFORMANCE BONDS REQUIRED

No contract shall be awarded unless its faithful performance shall be secured to the State by a bond in penal sum of not less than 20% of the amount of the contract.

Subchapter 2: PRIVATE WAYS

§3101. CALL OF MEETINGS; MAINTENANCE; REPAIRS

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Private way" means a public easement as defined in section 3021, subsection 2. [2007, c. 625, §1 (NEW).]

B. "Repairs and maintenance" does not include paving, except in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem or to repair and maintain pavement existing as of July 1, 2007. "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining

sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way. [2013, c. 198, §1 (AMD).]

[2013, c. 198, §1 (AMD) .]

2. Call of meeting. When 4 or more parcels of land are benefited by a private road, private way or bridge as an easement or by fee ownership of the private road, private way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting. The notary may issue a warrant or similar written notice setting forth the time, place and purpose of the meeting. Copies of the warrant or similar written notice must be mailed by means of the United States Postal Service to the owners of all the parcels benefited by the private road, private way or bridge at the addresses set forth in the municipal tax records at least 30 days before the date of the meeting. The notice must inform the owners of the planned meeting's agenda and specify all items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be called in the same manner or by a commissioner or board appointed at a previous meeting pursuant to subsection 5.

[2013, c. 198, §2 (AMD) .]

3. E-mail. E-mail may be used as an alternative to United States mail for sending notices and other materials under this section with the agreement of the receiving party as long as the communication includes the current address and telephone number of the sender for purposes of verification.

[2007, c. 625, §1 (NEW) .]

4. Voting. Each parcel of land benefited by a private road, private way or bridge represents one vote under this section; except that, if the bylaws of the association authorize more than one vote, then each parcel may represent no more than 2 votes under this subsection. The call to a meeting may state that an owner may elect in writing to appoint another owner to vote in the owner's stead. Owners voting by absentee ballot must be polled on all voting items that were not included in the agenda and the final tally must be reported to the owners.

[2013, c. 198, §3 (AMD) .]

4-A. Road associations. A road association under this subchapter through its commissioner or board may address present and future repair and maintenance of a private road, private way or bridge as authorized by the owners at meetings called and conducted pursuant to this section until the association is dissolved by a majority vote of its members.

[2013, c. 198, §4 (AMD) .]

5. Commissioner or board; assessment for repair, maintenance and other costs. The owners of parcels of land benefited by a private road, private way or bridge at a meeting called pursuant to subsection 2 may choose a commissioner or board, to be sworn. By a majority vote of the owners present and voting in person or by written proxy or absentee ballot, the owners may determine what repairs and maintenance are necessary and the materials to be furnished or amount of money to be paid by each owner for repairs and maintenance and may determine the amount of money to be paid by each owner for other costs, including, but not limited to, the cost of liability insurance for the officers, directors and owners and costs of administration. The determination of each owner's share of the total cost must be fair and equitable and based upon a formula provided for in the road association's bylaws or adopted by the owners at a meeting called and conducted

pursuant to this section. The commissioner or board shall report the outcome of all votes to all the owners by United States mail within 30 days. Special assessments for emergency repairs and maintenance may be made at a duly held meeting called for that purpose. Emergency repairs and maintenance are those actions necessary to maintain or restore the functionality of the private road, private way or bridge.

[2013, c. 198, §5 (AMD) .]

5-A. Easements. A road association under this subchapter may negotiate an easement for the installation of a ditch, drain, culvert or other storm water management infrastructure to benefit the private road, private way or bridge. The easement must specify when a ditch, drain, culvert or other storm water management infrastructure must be maintained and include reasonable performance standards to guide the timing and extent of its upkeep and repair. The easement must also be recorded at the registry of deeds in the county in which the property subject to the easement is located. A ditch, drain, culvert or other storm water management infrastructure subject to an easement under this subsection must be under the control of and maintained by the road association.

[2013, c. 198, §6 (AMD) .]

6. Commercial or forest management purposes. This section does not apply to a private road, private way or bridge constructed or primarily used for commercial or forest management purposes.

[2007, c. 625, §1 (NEW) .]

7. Immunity from suit. A commissioner, board or owner of a parcel of land who undertakes activities of a road association under this subchapter is immune from civil liability in all actions by owners or lessees of other lots for the following activities:

- A. The determination of repairs and maintenance to be undertaken; [2009, c. 238, §1 (NEW).]
- B. The determination of materials to be furnished or amount of money to be paid by each owner for repairs and maintenance; [2009, c. 238, §1 (NEW).]
- C. The collection of the money from each owner; and [2009, c. 238, §1 (NEW).]
- D. The awarding of a contract authorized under section 3103. [2009, c. 238, §1 (NEW).]

[2009, c. 238, §1 (NEW) .]

8. Environmental violations. Notwithstanding subsection 7, a commissioner, board or owner of a parcel of land is not immune from an enforcement action for a violation of law under the jurisdiction of the Department of Environmental Protection or a municipality.

[2009, c. 238, §2 (NEW) .]

9. Insurance. A road association under this subchapter may purchase liability insurance to defend and indemnify the road association's officers, directors and owner members for any and all claims of liability or violation of law concerning the private road, private way or bridge and may include the costs of such insurance in the determination of each owner's share of the total cost under subsection 5.

[2013, c. 198, §7 (NEW) .]

SECTION HISTORY

1995, c. 227, §1 (AMD). 1997, c. 682, §1 (AMD). 1999, c. 552, §1 (AMD). 2007, c. 162, §1 (AMD). 2007, c. 625, §1 (RPR). 2009, c. 238, §§1, 2 (AMD). 2009, c. 239, §§1-3 (AMD). 2013, c. 198, §§1-7 (AMD).

§3102. COMMISSIONER'S OR BOARD'S DUTIES; NEGLECT OF OWNERS TO PAY

The commissioner or board chosen under section 3101, with respect to the private road, private way or bridge, has the powers of a road commissioner. If any owner, on requirement of the commissioner or board, neglects to furnish that owner's proportion of labor, materials or money, the same may be furnished by the other owners and recovered of the owner neglecting to pay in a civil action, together with costs of suit and reasonable attorney's fees. Such civil action may be brought in the name of and by the road association created pursuant to this subchapter and the decision to bring that civil action may be made by the commissioner or board or as otherwise provided for in the road association's bylaws. The commissioner's or board's apportioning of the cost of repairs to the road undertaken pursuant to the provisions of section 3101 may not exceed 1% of an individual owner's municipal property valuation in any calendar year. [2013, c. 198, §8 (AMD).]

SECTION HISTORY

1997, c. 682, §2 (AMD). 1999, c. 552, §2 (AMD). 2007, c. 625, §2 (AMD). 2013, c. 198, §8 (AMD).

§3103. CONTRACTS FOR REPAIR

The owners, at a meeting held under section 3101, may by a majority vote of the owners present and voting in person or by written proxy or absentee ballot authorize a contract to be made for making repairs to and maintaining the private road, private way or bridge by the year or for a lesser time and may raise money for that purpose pursuant to section 3101, subsection 5. [2013, c. 198, §9 (AMD).]

SECTION HISTORY

1997, c. 682, §2 (AMD). 2005, c. 479, §1 (AMD). 2007, c. 625, §3 (AMD). 2013, c. 198, §9 (AMD).

§3104. PENALTIES AND PROCESS

Money recovered under sections 3102 and 3103 is for the use of the owners. In any notice of claim or process for the money's recovery, a description of the owners as owners of parcels of land benefited by the private road, private way or bridge by name, clearly describing each owner's parcel of land by the book and page number of the owner's deed as recorded in the county's registry of deeds and the private road, private way or bridge, is sufficient. If the private road, private way or bridge is shown on a plan recorded in the county's registry of deeds, the plan's recording reference is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest. Any money owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners of the subject parcels, jointly or severally, and also burdens the parcel and runs with the land upon the transfer of any owner's interest. After June 30, 2018, any money owed pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs with the land upon the transfer of any owner's interest unless a notice of claim is recorded in the county's registry of deeds prior to the transfer. A notice of claim filed in the registry of deeds expires 18 months from the date of recording unless extended prior to the expiration by recording of a notice of extension of the notice of claim. A recorded notice of claim may be extended for additional 18-month periods

until the claim is paid. The commissioner or board may cause to be recorded in the county's registry of deeds a notice of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent and may add to the amount owed the recording costs for filing the notice of claim. The recording of such notice does not constitute slander of title. Before recording such notice or service of process of a complaint for collection in a civil action, the commissioner or board shall give the owner against whom such action is to be taken written notice, in the same manner as written notices of meetings are provided for in section 3101, of the intended action if the debt is not paid within 20 days of the date of the written notice. This written notice to cure must be sent at least 30 days before the recording of the notice of claim or the service of process of the complaint for collection in a civil action. [2017, c. 306, §1 (AMD).]

SECTION HISTORY

1997, c. 682, §2 (AMD). 2007, c. 625, §4 (AMD). 2013, c. 198, §10 (AMD). 2017, c. 306, §1 (AMD).

§3105. USE OF TOWN EQUIPMENT

(REPEALED)

SECTION HISTORY

2009, c. 239, §4 (RPR). 2009, c. 501, §1 (RP).

§3105-A. USE OF TOWN EQUIPMENT

The inhabitants of any town or village corporation at a legal town or village corporation meeting may authorize the municipal officers of the town or assessors of the village corporation to use its highway equipment on private ways within such town or village corporation whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection. [2009, c. 501, §2 (NEW).]

SECTION HISTORY

2009, c. 501, §2 (NEW).

§3106. MUNICIPAL ASSISTANCE FOR PURPOSES OF PROTECTING OR RESTORING A GREAT POND

1. Repairs to a private road. For the purpose of protecting or restoring a great pond, as defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a great pond if:

A. The private road, way or bridge is within the watershed of the great pond; [2009, c. 225, §1 (NEW).]

B. The great pond:

(1) Is listed on the Department of Environmental Protection's list of bodies of water most at risk pursuant to Title 38, section 420-D, subsection 3;

(2) Has been listed as impaired in an integrated water quality monitoring and assessment report submitted by the Department of Environmental Protection to the United States

Environmental Protection Agency pursuant to the federal Clean Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or

(3) Is identified as having threats to water quality in a completed watershed survey that uses a protocol accepted by the Department of Environmental Protection; [2009, c. 225, §1 (NEW).]

C. The Department of Environmental Protection or the municipality determines that the private road, way or bridge is contributing to the degradation of the water quality of the great pond based upon an evaluation of the road, way or bridge using a protocol accepted by the department; [2009, c. 225, §1 (NEW).]

D. The repair complies with best management practices required by the Department of Environmental Protection; and [2009, c. 225, §1 (NEW).]

E. The private road, way or bridge is maintained by a road association organized under this subchapter or Title 13-B. [2009, c. 225, §1 (NEW).]

[2009, c. 501, §3 (AMD) .]

2. Rules. The Department of Environmental Protection may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2009, c. 225, §1 (NEW) .]

SECTION HISTORY

2009, c. 225, §1 (NEW). 2009, c. 501, §3 (AMD).

Subchapter 3: BRIDLE PATHS AND TRAILS

§3151. BRIDLE PATHS AND TRAILS; DAMAGES

Bridle paths and trails may be laid out, altered or discontinued by any town or city within such town or city on petition therefor in the same manner as is provided by law for the laying out, altering or discontinuing of town ways in a town or city streets in a city, except that no cultivated or improved land shall be taken without the consent of the owner and a 2/3 vote shall be required for the acceptance of such paths and trails by any town. All provisions now in force as to assessment of damages and appeal therefrom in cases of laying out, altering and discontinuing town ways in towns or city streets shall apply to laying out, altering and discontinuing bridle paths and trails, except that the petitioners shall have no right of appeal.

§3152. TOWN REGULATIONS APPLY

Bridle paths and trails, when laid out and accepted under section 3151, shall be subject to such regulations as to use as may be established by the city or town laying them out.

§3153. NO OBLIGATION TO KEEP OPEN IN WINTER; BRIDGES TO BE SAFE; SIGNS

Cities and towns maintaining bridle paths and trails mentioned in sections 3151 and 3152 shall not be under any obligation to keep them in repair or to break them out in winter. If any city or town

shall erect a bridge on such bridle path or trail, it shall be under the same obligation to keep such bridge in a safe condition for the use of horses and riders as it is now under to keep highway bridges in repair for the purposes for which they are used. Such city or town shall erect at the entrance of such bridle paths and trails suitable signs, signifying that they are bridle paths or trails only, and not for use of vehicles, and that persons may use them at their own risk.

Subchapter 4: SNOW REMOVAL

§3201. REMOVAL REQUIRED; DAMAGES

When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall without delay cause them to be repaired. All damage, accruing to a person in his business or property through neglect of such road commissioner or the municipal officers of such town to so render passable ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a civil action.

§3202. MAIL ROUTES; SNOW FENCES

There shall be furnished and kept in repair in each section of the town through which there is a mail route some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of 10 feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein, but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner.

Subchapter 5: DRAINAGE AND WATERCOURSES

§3251. DITCHES, DRAINS AND CULVERTS; CONTROL; DAMAGES

The municipal officers of a town may at the expense of the town construct ditches, drains and culverts to carry water away from any highway or road therein, and over or through any lands of persons or corporations, when they deem it necessary for public convenience or for the proper care of such highway or road, provided no such ditch, drain or culvert shall pass under or within 20 feet of any dwelling house without the consent of the owner thereof. Such ditches, drains and culverts may be constructed under such highways or roads. Such ditches, drains or culverts shall be under the control of said municipal officers and interference therewith may be punishable by a fine of not more than \$500 or by imprisonment for not more than 3 months, or by both. If such town does not maintain and keep in repair such ditches, drains and culverts, the owner or occupant of the lands through or over which they pass may have his action against the town for damages thereby sustained.

Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways.

§3252. DRAINAGE OR OBSTRUCTION OF PUBLIC WAYS

1. Change in drainage; obstruction. A person, personally or through the person's agents or servants, may not do any of the following acts in a manner that changes the drainage of a public way or obstructs a public way:

A. Cultivate, in connection with the improvement of lands adjacent to a public way, any portion of the wrought portion of a public way; [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Turn teams, tractors, farm machinery or other equipment upon the wrought portion of a public way; or [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Deposit within or along any ditch or drain in a public way any material that will obstruct the flow of water in the ditch or drain or otherwise obstruct the way. With the written consent and in accordance with specifications of the legal authorities having supervision of the ditch or drain, a person may, to provide egress and regress to and from lands occupied by that person, lawfully construct and maintain a bridge across the ditch or drain. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Penalties. The following penalties apply to violations of this section.

A. A person who intentionally or knowingly violates subsection 1 commits a civil violation for which a fine of not more than \$50 plus costs may be adjudged. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally or knowingly violates subsection 1 after having previously violated this section commits a civil violation for which a fine of not more than \$100 plus costs may be adjudged. [2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

All fines recovered under this section, except in cases where the way involved was maintained by the State, must be paid to the treasurer of the municipality, or, for an unorganized place, to the treasurer of the county, where such offense is committed and must be expended in the construction and maintenance of public ways or drains therein.

[2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Damages. In addition to the fines under subsection 2, a person who intentionally or knowingly violates subsection 1 is liable for double the amount of the actual damage, to be recovered in a civil action by the municipality, or, in behalf of any unorganized place, by the county where the offense is committed.

[2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Jurisdiction. In all prosecutions under this section, the District Court has, upon complaint, jurisdiction concurrent with the Superior Court.

[2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

5. Application. This section does not apply to a person having legal supervision of a public way.

[2003, c. 452, Pt. L, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L7 (RPR).

§3253. VIOLATIONS; JURISDICTION

(REPEALED)

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L8 (RP).

§3254. COMPLAINTS

When the attention of a municipal officer, or, for an unorganized place, a county commissioner, is directed to a violation of section 3252 within the municipal officer's or county commissioner's jurisdiction, the municipal officer or county commissioner shall enter a complaint against the offender and prosecute the violation to final judgment. [2003, c. 452, Pt. L, §9 (RPR); 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §L9 (RPR).

§3255. WATERCOURSES NOT TO INJURE PROPERTY; REMEDY

No road commissioner, without written permission from the municipal officers, shall cause a watercourse to be so constructed by the side of a way as to incommode any person's house or other building or to obstruct anyone in the prosecution of his business. Any person so aggrieved may complain to the municipal officers, who shall view the watercourse and may cause it to be altered as they direct.

Subchapter 6: BARRIERS

§3271. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following words have the following meanings. [1987, c. 75, (NEW).]

1. Barrier. "Barrier" means any wire, cable, cable wire, chain link, lumber, gate or other similar device placed or erected across a town way for the purpose of barring access to that way.

[1987, c. 75, (NEW) .]

2. Town way. "Town way" means an area or strip of land designated and held by a municipality for passage by motor vehicles.

[1987, c. 75, (NEW) .]

SECTION HISTORY

1987, c. 75, (NEW).

§3272. MARKED BARRIERS

The municipal officers of any municipality that erects or places a barrier across a town way shall cause the barrier to be marked in a manner that causes the barrier to be visible to a person traveling on the town way towards the barrier on a snowmobile, all-terrain vehicle, motorcycle or similar vehicle. The officers shall cause the barrier to be marked in a manner making the barrier visible at a distance that is a reasonable stopping distance. A barrier may be marked by flags, fluorescent coloring, signs or in any other manner making the barrier visible as required in this section. [1987, c. 75, (NEW).]

The municipal officers shall cause barriers marked under this section to be inspected periodically to ensure that the marking remains. [1987, c. 75, (NEW).]

SECTION HISTORY

1987, c. 75, (NEW).

§3273. PENALTY

Any person who violates section 3272 commits a civil violation for which a forfeiture not to exceed \$500 may be adjudged. [1987, c. 75, (NEW).]

SECTION HISTORY

1987, c. 75, (NEW).