

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Cleon H. Turner

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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Cleon H. Turner

DISTRICT/ADDRESS:

1st Barnstable

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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

4 SECTION 2: Said section shall be further amended by adding at the end of said section 12 the
5 following language;

6 The term “proprietor” as used in this chapter shall mean “owner”.

7 The term “rightful occupant” as used in this chapter shall mean any person with a lawful right to use the
8 private road, bridge or other private amenity by grant or implication.

9 The term, “other common amenity” shall mean private parks, buildings, recreational facilities, beaches
10 and the like.

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

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

17 A servitude is created when real property is conveyed intending to create a servitude, or if the
18 requirements of a servitude by necessity are met. The creation of a private road, bridge, other structure,
19 or common areas such as parks and beaches requiring maintenance within a private development shall be

20 deemed to create a servitude for the maintenance of the private road, bridge, structure, or common areas.
21 Such servitudes and servitudes by necessity shall continue as long as the need for maintenance continues
22 or as long as the road, bridge, structure or amenity remains private.

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

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

34 The terms road, bridges and common areas shall include any and all appurtenances to such roads, bridges
35 and common areas including but not limited to roadway rights of way, drainage, abutments, slopes, ramps
36 and approaches.

37 b. The manner and mechanism for contribution, collection and maintenance shall be as stated in such any
38 recorded document relating thereto notwithstanding the fact that any conditions or restrictions imposed by
39 said document have expired by the language of the document or by operation of law unless such manner
40 and mechanism is amended by majority vote of owners and occupants having such rights and obligations.
41 Votes to amend the provisions for collection of funds, increase or decrease in assessments and
42 maintenance of roads, bridges, beaches and other common areas shall be in the manner stated in the
43 recorded document. If there is no provision in such document for increasing or decreasing amounts to be
44 paid, the proprietors and rightful occupants may call such a meeting pursuant to sections 12, 13 and 14 of
45 this chapter to determine those issues.

46 c. If no document has been recorded describing the manner and mechanism for determining such
47 maintenance and contributions, proprietors and rightful occupants subject to a servitude shall have the
48 power to create an association of property owners. Such an association may be created by a majority of
49 the property owners. If there is no majority, willing to voluntarily create an association, an association
50 may be created using the provisions of sections 12, 13 and 14 of this chapter. Once an association has
51 been created, all owners and rightful occupants subject to the servitude shall automatically become
52 association members. The association shall establish and follow a formal process, described below, to
53 determine by-laws, maintenance fees and other obligations.

54 The association shall have a board of directors consisting of three, five, or seven members. The directors
55 shall be owners subject to a servitude, and shall be elected by majority vote of the proprietors and rightful
56 occupants subject to the servitude. The directors shall serve a term to be determined by a meeting of
57 proprietors and rightful occupants. The directors shall hold a general meeting at least once per year,
58 wherein proprietors and rightful occupants belonging to the association may be heard. The directors shall
59 reach decisions on by-laws of the association, maintenance, maintenance fees and other powers through a

60 majority vote and such determinations shall be approved or disapproved by a majority of proprietors and
61 rightful occupants at a meeting called for that purpose. Directors may call additional meetings as they
62 deem necessary or at the request of proprietors and rightful occupants. Notice of all meeting shall be
63 mailed to all proprietors and rightful occupants at least fourteen days before the meeting. If the directors
64 fail or refuse to call a meeting when required or when petitioned to do so by three or more proprietors and
65 rightful occupants, proprietors and rightful occupants may call such meeting pursuant to section 12 of this
66 chapter. Once an association has been created, any meeting of the proprietors and rightful occupants shall
67 be governed by the by-laws and rules established by the association.

68

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

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