HOUSE DOCKET, NO. 507 FILED ON: 1/18/2011

HOUSE . . . . . No. 579

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cleon H. Turner	*1st Barnstable*
William Smitty Pignatelli	*4th Berkshire*
James B. Eldridge	
	☐ *[District]*
	☐

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By Mr. Turner of Dennis, a petition (accompanied by bill, House, No. 579) of Cleon H. Turner, William "Smitty" Pignatelli and James B. Eldridge relative to the maintenance of private roads, beaches and amenities. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3412* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

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

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

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

SECTION 3: Said section 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 be a servitude and not a condition or restriction.

A 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 areas 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 areas. 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 areas, or whose property does not abut such private roads, bridges, beaches and other common areas but who has the use of such private roads, bridges, beaches, or other common areas by grant or implication, to maintain or contribute to the maintenance of such roads, bridges, beaches or other common areas shall continue as long as the privilege, right to use or benefit continues and as long as the road or roads, bridges and common areas remain private regardless of whether any recorded covenants, conditions and restrictions affecting such subdivision, roads, bridges, beaches or other common areas have expired.

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

b. The manner and mechanism for contribution, collection and maintenance shall be as stated in such 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 manner and mechanism 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 areas shall be in the manner stated in the recorded document. If there is no provision in such document for increasing or decreasing amounts to be paid, the proprietors and rightful occupants may call such a meeting pursuant to sections 12, 13 and 14 of this chapter to determine those issues.

c. If no document has been recorded describing the manner and mechanism 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

53 may be created by a majority of the property owners. If there is no majority, willing to
54 voluntarily create an association, an association may be created using the provisions of sections
55 12, 13 and 14 of this chapter. Once an association has been created, all owners and rightful
56 occupants subject to the servitude shall automatically become association members. The
57 association shall establish and follow a formal process, described below, to determine by-laws,
58 maintenance fees and other obligations.

59 The association shall have a board of directors consisting of three, five, or seven
60 members. The directors shall be owners subject to a servitude, and shall be elected by majority
61 vote of the proprietors and rightful occupants subject to the servitude. The directors shall serve
62 a term to be determined by a meeting of proprietors and rightful occupants. The directors shall
63 hold a general meeting at least once per year, wherein proprietors and rightful occupants
64 belonging to the association may be heard. The directors shall reach decisions on by-laws of the
65 association, maintenance, maintenance fees and other powers through a majority vote and such
66 determinations shall be approved or disapproved by a majority of proprietors and rightful
67 occupants at a meeting called for that purpose. Directors may call additional meetings as they
68 deem necessary or at the request of proprietors and rightful occupants. Notice of all meeting shall
69 be mailed to all proprietors and rightful occupants at least fourteen days before the meeting. If
70 the directors fail or refuse to call a meeting when required or when petitioned to do so by three or
71 more proprietors and rightful occupants, proprietors and rightful occupants may call such
72 meeting pursuant to section 12 of this chapter. Once an association has been created, any
73 meeting of the proprietors and rightful occupants shall be governed by the by-laws and rules
74 established by the association.

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

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