

HB 1057 - relative to the maintenance of private roads held in common ownership

Sponsor: Rep. Deborah Aylward

Co-Sponsor: Rep. David Fracht

Dear Committee Chair and Members:

Respectfully submitted is a ‘**Proposed Amendment**’ for HB 1057, followed by a ‘**Purpose Statement**’ for members consideration.

I. RSA 231:81-a I (b):

1) Current language (RSA 231:81-a I(b))

“Installation of improvements, such as culverts, fencing, or upgraded materials, shall not be included without the written consent of a **majority of owners**, unless otherwise provided by recorded agreement.”

2) Required amendment, paragraph should read:

Installation of improvements, such as culverts, fencing, or upgraded materials, shall not be included without the written, *unanimous* consent of *the* owners, unless otherwise provided by a recorded agreement or homeowners’ association bylaws. *For purposes of this subsection, “unanimous consent” means the written consent of the owners of each affected lot, with each lot entitled to a single consent, regardless of the number of owners of that lot.*

REASONING

This amendment addresses a **practical and legal gap**. Private roads held in common ownership often lack homeowners’ associations, bylaws, voting procedures, or enforcement mechanisms. Without those safeguards, allowing a **numerical majority** to impose improvements or cost-sharing effectively creates an informal governing body **without due-process protections**.

Improvements **differ** from routine maintenance. They can burden title, alter drainage, affect access, and impose long-term financial obligations. Under New Hampshire property law, those types of obligations generally require either **unanimous consent** or **judicial oversight** unless owners have **voluntarily agreed** to a different structure.

The amendment preserves flexibility. Owners remain free to **adopt a recorded agreement** or form a voluntary corporation HOA bylaws that authorize majority approval and cost-sharing among it’s own members if they choose. Routine maintenance and emergency repairs are unaffected.

This change simply ensures that, absent a formal governance framework, no owner can be compelled to accept improvements or shared costs without their consent. It protects property rights, avoids unintended coercion, and aligns the statute with established principles of due process and common ownership.

This amendment ensures that improvements and shared costs cannot be imposed by informal majority vote unless owners have created a formal governance structure or agreed otherwise.

II. HB 1057 Purpose Statement

Private roads and easements are vital to thousands of NH residents who rely on shared, often unregulated access. When disputes arise, unclear rules lead to delayed emergency response, legal costs, and neighbor conflict.

The purpose of this legislation is to **codify, clarify, and harmonize** longstanding New Hampshire common-law principles governing privately owned roads held in common ownership. While New Hampshire courts have repeatedly articulated the rights and obligations of co-owners, easement holders, and users of private ways, the existing version of **RSA 231:81-a contains no definitions, no standards of maintenance, no notice requirements, and no procedural mechanism to resolve disputes**. This bill fills those statutory gaps by **aligning the law with well-established judicial precedent**.

1. Codifying NH Common-Law Maintenance Duties

New Hampshire courts have long held that co-owners share a mutual obligation to maintain commonly held access ways in a condition suitable for reasonable use, even absent an express agreement. See, e.g.:

- **Village Green Condo. Ass'n v. Hodges**, 167 N.H. 497 (2015) – recognizing proportional contributions and the equitable apportionment of maintenance obligations based on use and benefit.
- **Hearn v. Cruce**, 202 N.H. 226 (2020) – affirming that owners who derive benefit from access bear a corresponding duty to contribute to the reasonable costs of maintaining that access.
- **Choquette & a.v. Roy, et. al.**, the court needed to clarify who was responsible for the maintenance of the easements in question. The court determined that the easement user had the common law right to maintain the easement since they were increasing the burden on it. This right would exist even if no other easement users performed maintenance on the easement.

There is no explicit statewide **criminal statute** that says “you may not obstruct a private road.” So right now, enforcement typically happens through:

- Expensive civil action (lawsuit):

An affected owner may:

- File for injunctive relief (court order to remove the obstruction),

- Sue for damages (if access was blocked or maintenance impeded), or
- Use self-help, if permitted by case law or implied rights of co-owners.

NH courts recognize private nuisances and obstruction of easements as civilly actionable.

2. Criminal enforcement:

Only applies in narrow cases, e.g.:

- Obstructing emergency access may violate fire safety codes.
- Criminal mischief under RSA 634:2 could apply if there's damage to property.
- Trespass or disorderly conduct might apply if confrontation or entry is involved, but not the obstruction alone.

The bill codifies this line of cases by establishing statutory definitions of “**equal**” and “**equitable**” cost allocation, mirroring the courts’ reliance on proportionality and use-based fairness.

3. Common Law – Self-Help

New Hampshire common law allows limited **self-help** for co-owners of a right-of-way to remove obstructions, especially if:

- The obstruction interferes with intended access,
- Significantly obstructs routine maintenance, and
- The removal is reasonable and nonviolent (e.g., trimming branches, moving a barrier).

Case Example:

Courts have allowed a dominant estate holder to clear natural or man-made obstructions to an easement without court order, provided no excessive force or trespass occurs.

4. Clarifying What Constitutes “Maintenance”

New Hampshire precedent consistently distinguishes **routine maintenance** (necessary to preserve access, and to prevent from further decline and in a condition for suitable travel thereupon) from **betterments or improvements**, which require broader consent. See:

- **Monagle v. Taylor**, No. 2013-0629 (N.H. Sup. Ct. Order, 2014) – holding that a co-owner may not unilaterally make alterations that substantially change the character or use of a shared right-of-way, but may perform necessary repair work.
- **Arcidi v. Town of Rye**, 157 N.H. 78 (2008) – distinguishing between maintenance required to preserve access and alterations that exceed the scope of permissible unilateral action. “A grantee takes by implication whatever rights are reasonably necessary to enable it to enjoy the easement beneficially.”

The bill adopts and codifies these distinctions by defining:

- “*Maintenance*” as work preserving the road for all-season, passable travel and emergency access, **to include snow and ice removal**
- while excluding improvements (e.g., culverts, material upgrades) absent unanimous consent.

Currently, NH law and case law do not define ‘snowplowing’ as ‘maintenance’.

5 Preventing Abuse Through Obstructions and Self-Help

New Hampshire case law recognizes the right of co-owners to prevent or remove unlawful obstructions placed within a commonly owned road. See:

- **Monagle v. Taylor**, supra – confirming that unilateral obstruction of a shared right-of-way is impermissible and that an aggrieved co-owner may exercise reasonable self-help to remove it.
- The court in this case affirmed that the owner of a dominant estate has the right to a "defined way" and can do "**whatever is necessary** to make it passable or usable for the purposes named in the grant." The court's decision in *Monagle* upheld a trial court ruling that prevented a servient estate owner **from placing boulders that obstructed a shared driveway, reinforcing the dominant estate's right to have a path free of unreasonable interference.**

The bill **codifies this jurisprudence** by prohibiting any obstruction or encroachment placed **without unanimous consent** and **authorizing removal using reasonable care.**

6. Preserving the Stability of Property Rights and Access

Courts have long held that **adverse possession and prescriptive rights** cannot be acquired against a co-owner because each co-owner has equal right of use. This is reflected in:

- **Bonardi v. Kazmirchuk**, 173 N.H. 508 (2020) – emphasizing that acquisition of prescriptive rights requires exclusionary use adverse to the true owner.
- Numerous older cases barring adverse possession among co-tenants absent clear ouster.

The bill codifies and strengthens this doctrine by prohibiting the acquisition of adverse or prescriptive rights in privately owned roads held in **common ownership** after the effective date.

7. Establishing Procedures Long Recognized as Necessary by the Courts

Courts routinely note that the absence of:

- notice requirements,
- cost-sharing mechanisms,
- maintenance standards, and
- dispute-resolution processes

8. Which leads to unnecessary litigation, inconsistent outcomes, and inequitable burdens on landowners.

This bill addresses these structural deficiencies by creating:

- 30-day written-notice requirements for shared-cost repairs,
- emergency action authority,
- written cost-allocation proposals,
- mediation options, and
- judicial enforcement with equitable fee-shifting — all consistent with New Hampshire’s equitable-relief jurisprudence.
- Prohibits interference with stormwater ditches, preventing erosion and preserving topographical integrity

9. Harmonizing Statute With Practical Real-Property Doctrine

New Hampshire common law has long recognized that rights and obligations associated with private ways depend on:

- the nature of the title (common ownership vs. easement),
- the degree of use,
- the benefit derived, and
- the equitable circumstances of the parties.

This bill ensures that no one gets a free ride at the expense of their neighbors;

- does not alter easement law;
- respects due process, equal protection, and;
- does not involve takings.

10. What NH law does *not* recognize

New Hampshire law does **not** recognize:

- informal “road committees” as governing bodies
- implied HOAs
- authority arising solely from majority ownership

Informal groups of owners **cannot bootstrap authority** simply by declaring “majority rule” — they must first form a **voluntary corporation under RSA 292**.

The bill does not create new obligations for property owners, it reinforces obligations long recognized in NH common law. The only change is adding clarity and enforceability. Instead, it creates a predictable statutory framework only for situations where multiple owners hold an undivided interest in a private road, consistent with the principles articulated in:

- Village Green,
- Hearn,
- Monagle, and
- Related authorities.

In Summary

This legislation is intended to codify New Hampshire case law, provide clear statutory definitions, prevent access-related conflicts, protect co-owners from obstruction or loss of rights, and create a predictable, judicially recognizable framework for the maintenance and use of private roads held in common ownership.

It brings the statute into alignment with decades of well-settled precedent while reducing litigation, clarifying obligations, and protecting property rights.

II. Surveyor-focused

The purpose of this legislation is to provide statutory clarity and predictability for private roads held in common ownership, specifically addressing issues that licensed land surveyors regularly encounter when preparing plats, identifying road rights, resolving encroachments, or interpreting ambiguous deed language. The bill aligns New Hampshire statute with existing case law and creates uniform standards that reduce uncertainty in boundary determinations and right-of-way evaluations.

1. Clarifying What a “Private Road” Is — and Is Not

Surveyors frequently confront deeds and plans that inconsistently use the terms *road*, *driveway*, *right-of-way*, *easement*, *common land*, or *shared access*, often without defining them.

New Hampshire law is currently **silent** on what constitutes a “**private road held in common ownership.**”

This bill fills that gap by defining:

- Private road (a commonly held fee-owned roadway),
- Excluding easements, deeded access, and licenses,
- Distinguishing fee-owned common roads from easement-based ROWs — a critical distinction on plats and title plans.

This ensures surveyors can correctly classify the road type and apply the correct legal framework.

2. Establishing Statutory Definitions for “Maintenance”

Surveyors must often determine whether grading, ditching, widening, or material changes to a road constitute maintenance, repair, an improvement, or an encroachment.

New Hampshire case law (e.g., *Monagle v. Taylor*) draws a distinction between routine maintenance and alterations that change the character of the way.

This bill codifies that rule by defining maintenance as:

- Work necessary to preserve passable, all-season access,
- Including snow/ice removal, grading, pothole filling, washout repair, and ditch preservation,
- Excluding unilateral improvements (culverts, fencing, upgraded materials) unless agreed to by unanimous consent.

For surveyors, this provides predictable standards when evaluating:

- Whether a change constitutes a unilateral “improvement” vs. permissible maintenance;
- Whether field conditions indicate lawful maintenance or unauthorized modification.

3. Uniform Treatment of Dumped Materials, Stakes, Trees, Fences, and Other Encroachments

A major field issue for surveyors is determining what belongs inside the road boundary, and what is an encroachment that affects access or boundary interpretation.

Surveyors regularly encounter:

- Boulders placed in the way,
- Snow berms,
- Trees or limbs overhanging into the carriageway,
- Fences, signs, or gates placed without mutual consent,
- Stakes asserting unilateral “ownership” of road frontage.

NH courts (e.g., *Monagle*) recognize that such obstructions violate co-owner rights.

The bill now makes this explicit:

- No obstruction may be placed within road boundaries without unanimous consent,

- Any owner may remove unauthorized encroachments with reasonable care.

This gives surveyors a clear statutory basis when documenting encroachments, recommending removal, or preparing ROW descriptions.

4. Protecting Surveyors From Being Pulled Into Boundary/ROW Disputes That Stem From Statutory Ambiguity

Surveyors often become entangled in disputes between neighbors over:

- Where the road lies,
- Who pays for repairs,
- Whether adverse possession is being claimed,
- Whether common owners can block or narrow the roadway.

The bill eliminates several sources of conflict by codifying what the courts already hold:

No prescriptive or adverse rights may be acquired in a road held in common ownership

This is consistent with *Bonardi v. Kazmirchuk* and the longstanding rule that one co-owner cannot obtain adverse possession against another without a clear ouster.

For surveyors, this means:

- Field conditions suggesting long-term exclusive use do **not** create new rights in the road.
- Road narrowing, unilateral staking, or mowing patterns do **not** ripen into ownership claims.

5. Creating Predictable Notice and Dispute Procedures That Reduce Pressure on Surveyors

Many disputes arise simply because owners lack procedural guidance. Surveyors often become the “messenger” or “referee.”

The bill introduces:

- 30-day written notice before shared-cost work,

- Emergency action authority for blockage removal,
- Mediation options,
- A clear path to superior court for equitable relief.

This reduces the likelihood that surveyors are asked to:

- Certify one party's unilateral interpretation of rights,
- Endorse unrecorded or informal "agreements,"
- Testify about road usage patterns that were never formally documented.

6. Enhancing Accuracy in Subdivision Planning and Road Layout Interpretation

Surveyors must often determine:

- Whether a private road satisfies subdivision or emergency access requirements,
- Whether a road is maintained adequately for future lots,
- Whether the road layout found in plans corresponds with actual use.

Codifying the minimum standard of maintenance and defining the boundaries against obstruction allows surveyors to offer more accurate opinions regarding:

- Passability,
- All-season accessibility,
- Compliance with planning requirements,
- Accurate depiction of the traveled way vs. the right-of-way width.

7. Creating Reliability for Title Examiners and Lenders

Surveyors often collaborate with attorneys on access certifications. Ambiguity in RSA 231:81-a has historically created:

- Title irregularities,
- Mortgage underwriting hesitations,
- Questions regarding insurability and marketability of lots.

By defining:

- Ownership types,
- Maintenance obligations,
- Cost-sharing rules,
- Enforcement mechanisms,

The bill provides the predictability needed for clean closings and mortgage approvals.

State's Interest: Public Safety

In addition to clarifying private property rights and codifying longstanding New Hampshire case law, this bill addresses a **critical matter of public safety**. Private roads held in common ownership serve not only the landowners themselves, but also their guests, invitees, tenants, delivery personnel, tradesmen, utility workers, and first responders. New Hampshire courts have **repeatedly recognized the public interest** in maintaining unobstructed, passable access for emergency vehicles, and that inadequate or obstructed access **can materially endanger life and property**.

By establishing **minimum standards** for all-season passability, prohibiting unauthorized obstructions or encroachments within the traveled way, and defining maintenance to include snow and ice removal, this bill ensures that **private roads remain safe and navigable for ambulances, fire apparatus, law enforcement, road agents, and other emergency personnel**, whose ability to reach occupants in a timely manner depends on clear and reliable access. Surveyors routinely encounter situations where obstructions, neglect, or unilateral modifications create hazardous narrowing of the road corridor. This legislation provides a necessary statutory framework to prevent these conditions, reduce risk, and support consistent access for all who must lawfully travel these roads.

New Hampshire courts have long recognized the critical importance of safe, unobstructed access on private ways — particularly for emergency responders, delivery personnel, utility crews, and guests who must rely on these roads but exercise no control over their maintenance. The Court has repeatedly emphasized that

obstructions or degradation of access ways can create unreasonable risks to health and safety (*see, e.g., Arcidi v. Town of Rye*, 157 N.H. 78 (2008)).

By establishing minimum standards of all-season passability, requiring reasonable maintenance, and prohibiting unauthorized obstructions within the travel corridor, this bill ensures that private roads held in common ownership remain safe and accessible not only for the owners, but for guests, delivery drivers, contractors, postal carriers, propane and fuel trucks, and emergency apparatus whose timely access may determine the difference between preservation of life and catastrophic loss. The law provides the clarity needed to prevent the narrowing, barricading, or neglect of commonly held roads that surveyors, first responders, and municipalities encounter with increasing frequency.

In Summary — Why This Bill Matters to Surveyors

This legislation creates clear, surveyor-friendly definitions of private roads held in common ownership, protects against unauthorized encroachments, eliminates uncertainty about adverse claims, and provides a statutory structure consistent with New Hampshire case law.

The bill reduces the professional risk and ambiguity surveyors face when evaluating private roads, interpreting deeds, preparing plats, and mediating neighbor conflicts arising from unclear statutory language.

###