

LEGISLATIVE BULLETIN



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Longer Road Ahead for Discontinued Roads Bill Municipal Action Needed

Monday morning, the Committee on State and Local Government held a work session on the recommendations of an intersession stakeholder group seeking to find compromise for LD 1513, *An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences*, sponsored by Rep. Daniel Newman of Belgrade. An amended version could improve the annual legislative battle over road access, but the route to enactment would benefit greatly from the municipal voices who have experience with this issue.

The complexity and bank of existing road and public easement law meant stakeholders from the intersession working group could not agree on a path forward to satisfy some concerns about repair of a public easement after discontinuance. At issue is the fact-based way the issues on public easements must be weighed, the types of public activity that is allowed and any responsibility for the damage that occurs. Offering multiple scenarios from ATV usage on designated public ways, to hunting with dogs, logging activity and general abutting owner ire, the paths to resolution exist in law but are often cumbersome to navigate and time consuming to pursue because they must protect all abutters and users.

Following a meeting with representatives from the Landowner Relations Program in the Department of Inland Fisheries (IFW) and the Land Bureau in the Department of Agriculture Conservation in Forestry (ACF), who shared experiences with such roads around access, use and the importance for their existence to Maine's recreational

tourism goals, the committee turned the original "forced maintenance" bill into an initiative to establish the Maine Abandoned and Discontinued Roads Commission.

Members of the permanent body include representatives from the Departments of Inland Fisheries and Wildlife, Agriculture Conservation and Forestry and Transportation, the Attorney General's Office, an association of woodlot owners, a land trust organization, and members from organizations representing county and municipal

governments. Additionally, the group includes a resident who owns property on a discontinued or abandoned road, an attorney with experience in boundary disputes, a member of a statewide organization representing all-terrain vehicle or snowmobile users, and one unaffected member of the public.

The commission is tasked with examining and advising future Legislatures around the overlapping considerations regarding roads and easements while involving a

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A Rose By Any Other Name Would Still Smell Like Trash

Waste management is more technical than most people think. The process is influenced by a combination of chemistry, engineering, legalese, and economics. In Maine, the current mode of waste management is being reconsidered and the conversation is getting messy. A quick recap of past compromises and common waste management practices helps set the stage before delving into the present-day debate.

Here is the backstory.

The state has a 30-year contract with a private third-party operator, Casella, to manage the state-owned Juniper Ridge Landfill (JRL). The state prohibits JRL from importing out-of-state waste. Casella currently uses residuals processed from construction and demolition debris (CDD) as daily cover in JRL. Daily cover is a required practice; use of CDD residuals is

a choice among many alternatives.

Casella is receiving its residuals from ReSource Lewiston, which generates the byproduct from CDD that frequently comes from out-of-state. ReSource Lewiston claims it is dependent on out-of-state CDD and revenue from processing residuals to remain a viable business. JRL is filling up faster than expected, in part because Casella is accepting CDD residuals.

Previously the state provided ReSource Lewiston with an exemption to certain recycling targets as the business both elected to undertake massive investment in recycling infrastructure and is a keystone to the waste management landscape in Maine.

When the Legislature granted ReSource Lewiston an exemption to statewide recycling goals, it opened the door for the

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facility to accept additional out-of-state CDD, never intending for this product to end up in JRL. Legalese allowed Casella to accept the residuals produced from the processing of this CDD because technically the residual is a product of Maine, even though the generating waste came from out-of-state. Fast-forward a few years and a network of industry connections relies on out-of-state waste being processed into residuals and sent to JRL. All the while the state is watching its waste management hierarchy and recycling goals be subverted.

This brings us to the present day.

Carried over from last session is a bill that would close the loophole that permits residuals generated from out-of-state waste to pass as a Maine product. LD 1639 *An Act To Protect the Health and Welfare of Maine Communities and Reduce Harmful Solid Waste*, sponsored by Sen. Anne Carney of Cumberland County, creates a strict understanding of in-state versus out-of-state waste and how the volume of solid waste processed must correspond

to the amount of residuals produced. The legislation also puts ReSource Lewiston on a definite timeline to achieve recycling targets imposed on its contemporaries.

Lastly, the bill defines and adds “environmental justice” as a determination criterion for any new facility or expansion of an existing facility. This final piece comes as an anticipated expansion of JRL, as a result of the loophole, poses significant environmental and health impacts to nearby Penobscot Nation.

During its second work session on Monday, the Committee on Environment and Natural Resources heard prepared statements from and posed questions to both opposing and supporting parties. Representatives from Casella and ReSource Lewiston, along with their professional advocates, were in attendance to present their interpretation of the existing statutes, refute the notion they are abusing the loophole, and detail the economic devastation that LD 1639 would place on their operations. Casella reported there are no other suitable daily cover alternatives besides CDD residuals. ReSource Lewiston stated it may cease operation due to financial hardship if this bill is passed.

Members of the committee were not persuaded by the arguments of opposition parties. Sen. Rick Bennett from Oxford County was by far the boldest voice pushing back against Casella and ReSource Lewiston. Sen. Bennett, along with many of his colleagues, took offense to three general positions. First is the industry’s claim that Casella is not accepting out-of-state waste since the residual product they receive is processed in-state. Second is the assertion that affordable alternative daily covers are not available even though Casella is using alternatives in other states. Third is the private and foreign influences that control the two companies, rather than Casella or ReSource Lewiston being Maine-based firms.

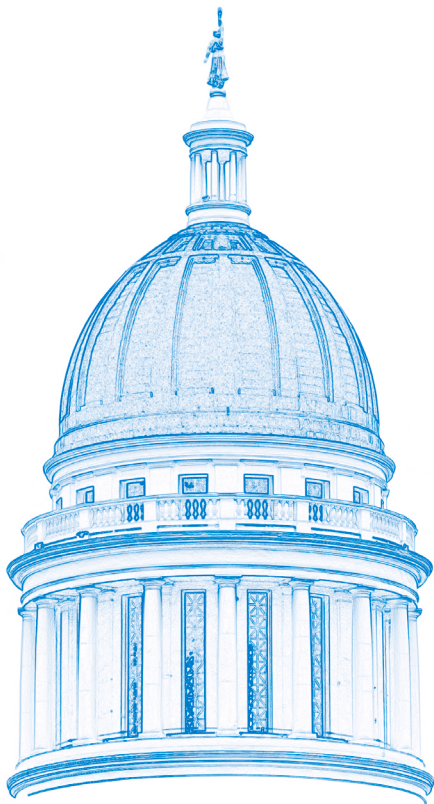
Sen. Bennett proclaimed that Casella is knowingly abusing a loophole that was mistakenly created in previous legislative sessions. No matter what Casella calls its CDD residue, the originating product came from out-of-state. In the Senator’s opinion the abuse has gone on long enough.

Supporting parties of the legislation presented a much different perspective than that of Casella or ReSource Lewiston. The arguments for closing this loophole include ending Maine’s history as the dumping ground for New England by elevating its waste management practices to equal or exceed protections in neighboring states, extending the lifetime of JRL and thus protecting nearby communities and tribal nations from encroachment of a landfill, removing a harmful exemption that gives ReSource Lewiston the freedom to create additional environmental impacts above and beyond most other facilities, and getting Maine back on track to achieve more aspirational recycling targets by 2025.

MMA offered neither for nor against testimony last session and was not invited to provide comment during the recent work session. Municipal officials have long supported the state’s waste management hierarchy and recycling goals, and as such believe this loophole should be corrected. Some even feel that more oversight of the industry is needed in general since some actors in the landscape are routinely taking advantage of loopholes and exemptions against the spirit of the law and the will of Legislature. On the other hand, this bill could create financial burdens for communities that send their waste to municipal or commercial landfills or be interpreted as defaulting on a compromise struck with essential private partners.

The session extended far beyond the allotted timeframe and the bill was tabled for further discussion and input from Maine’s Department of Environmental Protection.

A third work session is scheduled for Monday Jan. 31 at 12:00 p.m.



HEARING SCHEDULE

For the week of January 31, 2022

MONDAY, JANUARY 31

Labor & Housing

Room 202, Cross Building, 9:00 a.m.

Tel: 287-1331

LD 1874 – An Act To Clarify COVID-19 Paid Leave for School Employees.

LD 1879 – An Act To Support Law Enforcement Officers, Corrected Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Services Persons Diagnosed with Post-traumatic Stress Disorder.

Veterans & Legal Affairs

Room 437, State House, 11:00 a.m.

Tel: 287-1310

LD 1927 – An Act To Authorize Certain Off-premises Sales of Adult Use Marijuana.

LD 1930 – Resolve, Regarding Legislative Review of Portions of Chapter 1: Adult Use Marijuana Program Rule, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Marijuana Policy.

TUESDAY, FEBRUARY 1

Agriculture, Conservation & Forestry

Room 214, Cross Building, 11:00 a.m.

Tel: 287-1312

LD 1929 – An Act To Provide Assistance to Areas Severely Infested with Brown-tail Moths.

Health & Human Services

Room 209, Cross Building, 1:00 p.m.

Tel: 287-1317

LD 1582 – An Act To Enact the Maine Psilocybin Services Act.

LD 1909 – An Act To Remove Restrictions on Syringe Service Programs.

Judiciary

Room 438, State House, 1:00 p.m.

Tel: 287-1327

LD 1772 – An Act To Amend the Remote Meeting Laws in Maine's Freedom of Access Act.

Taxation

Room 127, State House, 10:30 a.m.

Tel: 287-1552

LD 1757 – An Act To Make Technical Changes to Maine Tax Laws.

LD 1917 – An Act To Amend the Tax Laws of the State.

WEDNESDAY, FEBRUARY 2

Criminal Justice & Public Safety

Room 436, State House, 10:00 a.m.

Tel: 287-1122

LD 1479 – An Act to Make Certain Traffic Infractions Secondary Offenses.

LD 1859 – An Act To Build More Sustainable Ambulance Services in Communities.

LD 1863 – An Act To Allow Bars with an Occupancy of 30 or Fewer Persons To Have Only One Bathroom.

Labor & Housing

Room 202, Cross Building, 9:00 a.m.

Tel: 287-1331

LD 1889 – An Act To Amend the Whistleblowers' Protection Act To Ensure Coverage in Unionized Workplaces.

LD 1891 – An Act To Continue Supporting Safe Drinking Water for Maine Families.

LD 1901 – An Act To Protect Funding for Health Care for Retired Teachers by Establishing an Investment Trust Fund.

THURSDAY, FEBRUARY 3

Energy, Utilities & Technology

Room 211, Cross Building, 9:00 a.m.

Tel: 287-4143

LD 1894 – An Act To Support Municipal Broadband Infrastructure through Incentives and Competition.

FRIDAY, FEBRUARY 4

Criminal Justice & Public Safety

Room 436, State House, 2:00 p.m.

Tel: 287-1122

LD 1604 – An Act to Reclassify Certain Offenses under the Inland Fisheries and Wildlife Laws and Motor Vehicle Laws and Increase the Efficiency of the Criminal Justice System.

Health & Human Services

Room 209, Cross Building, 9:00 a.m.

Tel: 287-1317

LD 1693 – An Act To Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust.

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearings and work sessions can be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/>.

Due to COVID-19 related restrictions (and until further notice), all public hearings and work sessions will be conducted remotely. Municipal officials interested in providing live remote testimony will need to email lio@legislature.maine.gov or call (207) 287-1692 no later than 5 p.m. the day before the hearing for information on how to participate. Comments on bills can be submitted in advance of a public hearing using the Legislature's testimony submission form (Online Testimony Submission (mainelegislature.org)) and interested parties can view committee proceedings, both live and recorded, on the Legislature's YouTube channel (News | Maine State Legislature.)

Longer Road Ahead for Discontinued Roads Bill (cont'd)

broader group of stakeholders and state agencies to make recommendations for amendments to existing law. The duties entail examining: (1) property owner liability; (2) public easement retention over an abandoned and discontinued road, including scope of permitted and actual public use; (3) statutory terminology; and (4) current statutory processes for abandonment and discontinuation of a road, including, barriers to determining the legal status of a road.

Questions have been raised about how the commission will be staffed and which agency may assume the coordinating role after the commissioners of IFW and ACF expressed they did not have the capacity to assume the duties, although these state agencies have an important interest in the outcomes.

Legislation attempting to restrict use, remove access, and force municipal maintenance on legally abandoned and discontinued roads is introduced annually, usually attempting to override the local democratic processes for fiscal allocation on a statewide

level to address acute localized disputes. As Maine property acquisition has soared under the pandemic flight from urban areas, the issues around the status of discontinued roads, expectations of public easement use, and the need to communicate the importance of these roads, will likely spur new user pressures and need for education around the issue's complex history.

A permanent commission with a broader coalition of stakeholders could provide a better location for these debates and assist with developing appropriate solutions. More importantly, it could help synthesize the possible impacts, history of development and need for balanced and fair judicial processes for future legislators, who often do not have all the stakeholders in the room when vetting proposed legislation perennially introduced. Simplified solutions often tilt in the favor of landowners over public interests or override a community's decision around their capacity to maintain what may often amount to long private driveways for a single residence.

The committee will hold a work session that will be conducted as a public hearing on the proposed road commission approach on Monday, Feb. 7 at 9:00 a.m.

Municipal officials interested in adding their voices in support for a better path forward on abandoned and discontinued roads should submit testimony via the legislative portal by going to <https://www.mainelegislature.org/testimony/>.

You must first select "Public Hearing," then "State and Local Government," and finally "April 30, 2021, 9:00 AM". From there, click the bullet next to "LD 1513 - *An Act To Require Maintenance of a Discontinued Road That Provides the Sole Access to One or More Residences*," and submit testimony as normal.

If you wish to provide oral testimony via Zoom at the hearing, please email the committee clerk directly at cheryl.mcgowan@legislature.maine.gov as soon as possible.

With your help, a better future for the bumpy issue of the maintenance of discontinued roads may wind its path through the legislative woods to the Governor's door.



MMA SFR Goes Social!

It's official, the State and Federal Relations (SFR) team has entered the Twitter-verse.

To push out information to local leaders in real time and increase awareness of the issues of municipal interest before the Maine State Legislature, SFR has launched the Twitter feed @memun_advocacy.

We can't promise witty banter like Wendy's Twitter feed, but we can commit to keeping the content non-partisan and issues focused, as is the case with all our advocacy efforts. The goal is to simply provide another tool to municipal officials who like to stay informed with what is happening in the State House.

We will continue to produce MMA's weekly Legislative Bulletin, which provides readers details of the issues addressed by legislative committees in the past week and important reminders for upcoming public hearings. If you are not on our electronic bulletin mailing list and would like to be, please contact Laura Ellis at lellis@memun.org.

As we explore new ways to ensure municipal voices are heard, including a future podcast, we hope you will share our feed, give us feedback and, of course, follow us.

LEGISLATIVE BULLETIN

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For Safety's Sake Leave the Lights On

Public safety services that address fire, crime, inclement weather, and health emergencies need to be ready at moment's notice and as such, the facilities that host these services must have reliable utility delivery. No one disagrees with this sentiment, not even the utility providers that deliver essential water, gas, and electricity to public safety facilities.

It should be unimaginable that a utility provider's employee could arrive at a fire station and determine that it is appropriate to disconnect service. Unfortunately, though, this has happened in Maine.

That is what makes LD 1847 *An Act To Prohibit a Public Utility from Terminating or Disconnecting Service to a Public Safety Facility without Advance Notice and Approval*, sponsored by Rep. Seth Berry of Bowdoinham, so baffling to municipal officials. There is such widespread

agreement on the seriousness of this matter that no one ever expected a utility provider to ever commit such an offense.

Specifically, the bill requires a public utility, before it terminates or disconnects a public safety facility's service, to provide 60 days' advance written notice and obtain written authorization from the Public Utilities Commission and the Department of Public Safety.

This legislation addresses the unexpected misalignment between theory and practice. Even though everyone knows public safety facilities must have essential utilities, utility providers are still terminating delivery to these facilities without reasonable advance notice or concern for the public's safety.

While this bill addresses all public utilities, ill-behavior on the side of Central Maine Power and Versant Power is the

impetus for this legislation. There are at least three reported instances of electric utility providers disconnecting service to municipal public safety facilities, putting the lives and well-being of staff and residents at risk. Putting aside that these instances were the result of clerical errors, no situation should ever constitute such behavior by providers unless there is sufficient advance notice and approval.

Past experiences have shown that providers need to proceed more diligently before terminating service, and regrettably LD 1847 is needed to secure the stability of our public safety facilities.

During the public hearing before the Energy, Utilities, and Technology Committee this week, municipal victims of these terminations testified to the mismanagement of their accounts while legislators berated utility providers for their lack of humanity. MMA supported passage of this bill on the basis that Maine's public safety facilities must have reliable essential utilities no matter what and that the past has proven that some providers cannot be trusted to uphold a commitment to safety without state oversight.

Both Versant and Central Maine Power opted for a position of neither for nor against. Only one party showed up to testify in opposition. The Maine Water Utilities Association agreed with the intent of the bill but pushed back on being included in legislation intended to target bad actors.

Ideally the safety net created by LD 1847 will never be tested. A normal level of customer service will resolve almost every instance of confusion. However, in the absence of provider due diligence this legislation will end the possibility that clerical or administrative errors, from the side of either customer or provider, will not create a risk to the residents of Maine.

A work session for this bill is scheduled for Thursday, Feb. 3 at 9:45 a.m.

Remote Meetings Part II

On Tuesday, Feb. 1 at 1:00 p.m., the Judiciary Committee will hold a public hearing on LD 1772, *An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act*. The bill, sponsored by Rep. Thom Harnett of Gardiner, responds to the concerns of municipal officials who believe the remote meeting law enacted last year would benefit from further refinement.

Under current law, after providing notice and conducting a public hearing, municipal boards and councils have the authority to adopt a policy regulating the use of remote meetings. The statute further clarifies that remote participation by a board or council member is authorized only when a physical presence is not practical, which may include an emergency, illness or other physical condition or temporary absence from the jurisdiction making it significantly difficult for a member to travel to attend in person or when geographic characteristics impede or slow travel.

LD 1772 strikes that provision and leaves it to the select board or council to adopt policies determining when it is in the best interests of the municipality to meet remotely, rather than being bound to the reasons enumerated in law. The bill also clarifies that the adopted policy applies to all other boards and committees within the municipality's jurisdiction.

Municipal officials are encouraged to participate in the public hearing by submitting written testimony or registering to provide in-person Zoom testimony via the Legislature's portal (<https://www.mainelegislature.org/testimony/>).



Maine Municipal Association

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AUGUSTA, MAINE 04330-9486

IN THE HOPPER

Environment & Natural Resources

LD 1940 – An Act To Ensure That Building Codes Allow the Installation and Use of Products and Equipment That Use Certain Federally Regulated Refrigerants. (Sponsored by Sen. Timberlake of Androscoggin Cty.)

This bill provides that building codes, including the Maine Uniform Building and Energy Code, may not prohibit the installation or use of any product or equipment regulated under the Maine’s hydrofluorocarbon use restrictions law that uses a refrigerant listed as acceptable under the federal Clean Air Act.

(The bill summaries are written by MMA staff and are not necessarily the bill’s summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the Legislative Bulletin to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA’s website, www.memun.org.)

Taxation

LD 1289 – An Act To Cut Property Taxes for Maine Residential Homeowners. (Sponsored by Rep. Perry of Bangor)

In part, this bill increases the value of the homestead exemption to \$35,000 as of April 1, 2023 and to \$45,000 as of April 1, 2024 and subsequent years.